THE ESSENTIALS

OF

BUSINESS LAW,

WITH

FORMS OF LEGAL AND BUSINESS DOCUMENTS.

PREPARED FOR THE USE OF

SCHOOLS AND COLLEGES,

AND AS A

BOOK ◆ OF ◆ REFERENCE.

FOR

BUSINESS MEN

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PREFACE.

The object of this treatise on business law is to supply a long-felt need in Canada of a work on the subject, which would be concise and at the same time as nearly complete as it is possible in treating a subject upon which so much can be written without exhausting it. The work is intended more especially as a text-book for use in all schools and colleges in which the commercial branches are taught, and it is hoped that the manner of presenting the subject will be found so plain and simple that the student will be able to master the subject-matter of every page without difficulty. Legal technicalities have been avoided except in the list of definitions at the end of the book. With the aid of a competent teacher, which from the very nature of the subject will be found necessary for a full and complete understanding of many of the intricate points briefly touched upon, the student should be able to obtain a sufficiently comprehensive and practical knowledge of business law as is requisite in every-day business affairs.

INTRODUCTION.

Law.—Principles of right and justice governing the every day actions of men, and their different rights in relation to each other are called laws.

It is also defined as a rule of action prescribed by a superior power, or a direction from the sovereign or governing power of a country to its people.

The object of the law is to secure to every man the full enjoyment of his rights; in so doing, it protects the weak and innocent, and punishes the guilty. It is divided into two general classes, viz.: *Common Law and Statute Law.* The Common Law consists of rules of action founded in reason and justice, and which have become binding through long established usage or custom; it is also called the unwritten law. The Statute Law is enacted by legislative power, and is called the written law.

Commercial Law or the Law Merchant (the law of merchants), is that part of the common law which regulates the commercial transactions of the world. This law grew out of the necessities of business, "being founded on what is termed, and was in fact the customs of merchants." Subsequently aided and regulated by decisions of the courts and by legislative enactment.

It is to this part of the law that the attention of business students, and business men, is invited. The importance of understanding the laws of trade and commerce is fully realized by every one who has been in commercial life. He who possesses this knowledge has a shield which the cunning and trickery of the world will find it hard to penetrate.

Knowledge of the Law.—Everyone is expected to know the law. It is a well-established maxim that "*ignorance of the law excuses no one.*"

The Source of Commercial Law.—It came from England. The colonists brought it with them, and when they finally reduced the whole country to English sway the Common Law of England became the law of America. Hence the laws of England, Canada and the United States are substantially the same, the Common Law of England being the basis of all of them, making it the fundamental law of the English-speaking people of the world; and it prevails in all cases where it has not been abrogated or modified by Statute Law.

Other Divisions of Law, in addition to Commercial Law, are Civil Law, Criminal Law, Marine Law, Constitutional Law and International Law. These divisions are made because of the different objects to which the law applies.

CONTRACTS.

Naturally the first division of Commercial Law to discuss is that of Contracts. Indeed, everything in the entire subject could be placed under this one head, for the law of contracts may be regarded as including nearly all the law which regulates the relations of human life. Contracts are certainly the basis of all business transactions, as will be seen hereafter.

We are constantly bound by an implied contract to do justice to our fellow-man in all our relations and dealings with him. When we buy or when we sell, when we make any kind of a bargain it is a contract, even the money that we handle every day is a contract.

The student will do well to consider each of the following divisions as subordinate to or growing out of this one.

Definition of a Contract.—A contract is an agreement between two or more competent persons to do or not to do some particular thing.

Kinds of Contracts.—Contracts are divided into three general classes, viz.:

1.—Contracts of Record.

2.—Specialties.

3.—Simple or parol contracts.

Contracts of Record are such obligations as are evidenced by judicial records. This is a form of contract by which one is bound for the payment of a sum of money or

the performance of some work which appears to be right by the evidence of a court. This is a contract of the highest nature, being established by the sentence of a court of justice.

Specialties.—A contract by specialty is any contract under seal, such as a deed, bond, mortgage or a covenant. These are looked upon as the next highest form of a contract, as being evidenced by the seal. At the present day the seal adds very little weight to a contract. In olden times, when men could not read or write, and they put their names to a contract by impressing their seal in melted wax, it had some practical use. Seals, however, are required on certain classes of instruments, like deeds and mortgages, and wherever required they must be affixed. In the absence of seals pieces of paper stuck on after the name, with the word "Seal" written across it, or the initials of the party signing placed upon it, or even a scroll made with a pen, will answer. Contracts under seal must of necessity be in writing. They do not require a consideration to make them valid. The seal implies consideration. It indicates deliberation in executing such documents, and a person is presumed to enter into a sealed contract with full knowledge of its contents, hence debarred from afterwards pleading insufficient consideration.

Simple or Parol Contracts include those agreements which are not comprised in the first two classes, and they may be made either oral or in writing. *Oral* and *parol*. Observe the difference between these two words. Well-educated people sometimes confound them owing to the similarity in the derivation of the two terms. A parol contract is any agreement not sealed. It may be written or oral.

Express and Implied Contracts.—As regard the mode of their creation, contracts are further distinguished as express or implied.

If the conditions of a contract, whether verbal or written, be expressly stated or agreed upon, it is then termed an expressed contract. If, on the other hand, there are no well defined and specific agreements regarding the undertaking, or the consideration to be paid for its accomplishment, it is called an implied contract.

The conditions of an expressed contract must be strictly complied with, and the parties to it are bound to faithfully observe the same, however onerous may be the burden, while the conditions of an implied contract not being agreed upon specifically, are such as custom may dictate. An illustration of this: A agrees to pay B $2 per day for labor. This is expressed, so far as the rate of wages is concerned, but the number of hours that shall be taken to constitute a day's work is not agreed upon, and must be supplied by implication. As a result it would be settled by the custom in such matters in the place where the contract was made.

Executed and Executory Contracts.—Contracts are still differently classified in reference to their time of performance, as executed and executory. They are said to be executed when the obligations therein created have been already carried out; executory when their fulfillment is yet to be accomplished. Thus, if I ask the price of your horse, pay the money and take it away, the contract is executed; but if I agree to buy the horse, and pay for it in the future, the contract is yet to be fulfilled or conditions complied with, and it is called an executory contract.

Elements of a Contract.—Legal contracts of every variety must include four essential constituent elements, as follows:

1st—There must be two or more competent parties.
2nd—There must be mutual consent.
3rd—There must be a valid consideration.
4th—There must be a definite and legal subject-matter to be acted upon.

Parties.—Every contract requires two or more parties, and every person may be considered as either *competent* or *incompetent* to make a contract. The conditions of competency are, that the parties are of legal age and of sound mind. The law regards all persons as infants who have not reached the age of twenty-one. Infants are considered incompetent to make a valid contract; because, on account of their inexperience, they are supposed to be unable to guard against artifice and fraud.

The contracts of infants are not void, but voidable.—That is, the law in substance gives to an infant the personal privilege of repudiating his contract; while, at the same time, the party making a contract with him will be bound, if of full age himself, as though both parties were of proper age.

An infant's contracts for necessaries are binding; but just what may be considered necessaries, and what luxuries, must be determined by his standing in society, or rather by his age and fortune.

An infant may buy such articles for food and clothing as are proper and necessary for the station in life in which he has been brought up and to which he belongs. He may contract for board, medical attendance and schooling, as are suitable and proper for his station in life, and all such contracts will be binding to the extent of the full market value, of what is furnished. All this is providing his parents or guardians unjustly fail to support him. A tradesman who takes advantage of a minor, and charges him an exorbitant price, cannot lawfully collect his bill, even though the minor agrees to pay it; nor can the tradesman keep more than the reasonable value if the minor has paid it. The articles purchased must be suitable to the minor's station in life. An infant may disaffirm or ratify his contracts on coming of age. The law does not say that he shall not make any contracts except those for necessaries.

It says that if he does they are voidable at his option. Within a reasonable time after coming of age he must repudiate them. If it is in his power he must restore to the other party what he receeived from him. If he fails to do this he takes the chance of ratifying the contract, by his silence, and he also ratifies it by first expressly recognizing it, secondly by partly reforming it, and thirdly by retaining the benefits or proceeds of it.

Infants must, however, bear in mind that they are liable, just as well as adults, for fraud, assault or any criminal act. While the law throws its protecting arm around the infant, it will not, however, allow him to do any unlawful act.

Pleading the Baby Act.—Pleading the Baby Act is rather an inelegant expression, sometimes used when a man is sued for failing to keep an agreement, and defends the suit on the ground that he was under age. It is not considered manly or honest. The adult person dealing with a minor is bound by the agreement, and cannot back out on the grounds that the other is a minor. The minor cannot waive his rights of infancy by any possible form of agreement.

Minors not at home, and supporting themselves, collecting their own wages, do not bind their parent even for necessaries. A minor purchasing anything held to be a necessary for him in his station of life, and refusing to pay for it, the merchant from whom he purchased the article can sue and recover from him, as though he were of age. If, however, the parent should sometimes pay part of the minor's bills for necessaries, they become liable for the whole of them. Minors not at home and supporting themselves may sue and recover for wages earned by themselves, no matter how young they are. The minor's note given for necessaries cannot be collected. If a merchant should chance to take such a note for necessaries he cannot sue on it, but he can hold the note until maturity, and then sue on

the account, presenting the note as evidence of the debt. He cannot sue until the note matures, as that would be the date of payment.

Incompetency.—Among the conditions of incompetency are *Minority*, *Insanity*, *Idiocy*, *Intoxication* and *Coverture*. As minority has already been discussed in connection with competency, we will consider the other conditions that render persons incapable of contracting.

Persons of unsound mind and memory cannot make a binding contract, because they cannot give clear and intelligent consent to its terms. A noted writer has said: "Want of reason must, of course, invalidate a contract, the very essence of which is consent."

Insanity and idiocity are not the same. An insane person is one whose mind is diseased or deranged; an idiot is one who has no mind; and with the above the law classifies the man who, by drunkenness, renders himself incapable of discharging the ordinary duties of life.

Married Women.—By coverture is meant marriage; the rule of the common law was that a married woman could not during her marriage make a binding contract; but this has been changed, giving to her entire control over her own property. A married woman may make contracts and carry on a business independent of her husband, but generally she cannot enter into a partnership without his consent. If she carries on an independent business it must be in her own name.

Alien Enemies.—Contracts made with alien enemies cannot be enforced.. Citizens of nations which are at war with each other are not allowed to carry on business intercourse. The policy of this is to keep the citizens of each nation attached to their own country, and to keep their interests adverse to the citizens of other nations.

The Indians of our country are protected by the Crown from fraud and deception, by being placed in a similar posi-

tion to minors, and rendered incapable of binding themselves in a contract. A person who makes a contract with them is bound, but the Indian is not bound, and cannot be sued.

Mutual assent is defined to be a "meeting of minds."—There can be no binding contract without the assent of both parties; and they must assent at the same time and to the same thing. Mutual assent consists of an offer by one party and its acceptance by the other; when the offer is verbal, and the time allowed for acceptance is not mentioned, it must be accepted immediately to make a contract. But in case the offer and acceptance are written and pass through the mails, the contract is complete when the acceptance is mailed; provided, the person accepting has received no notice of the withdrawal of the offer before mailing his letter. When the offer calls for an answer by return mail, any acceptance later than by return mail will not be binding by the party making the offer.

Time.—When the time in which a contract is to be performed is not expressed, the execution of the contract must be within a reasonable time; and this is to be determined by the thing to be done.

Duress is a personal restraint used to obtain consent to a contract either by fear or punishment. It is compulsion and inconsistent with voluntary consent. If a contract be entered into by means of violence, or under undue constraint of any kind, it may be voided upon the plea of duress.

Consideration is that which induces the parties to bind themselves by the contract. It is defined as the price of a promise. It may be *expressed* or *implied.* A consideration that is distinctly stated in the contract, whether oral or written, is said to be expressed. In all sealed instruments and in negotiable paper, the consideration is implied; as in promissory notes and drafts, the words "value received," imply, but do not state the consideration.

Consideration is commonly called valuable, good, sufficient, legal, insufficient, etc. The money value of a consideration does not determine whether it is sufficient, or not ; a very slight consideration will support a contract if it is what the law recognizes as valuable. A valuable consideration may be illustrated "by the payment of money, the delivery of property, the performance of work, making a promise for a promise," etc. A good consideration is one founded upon affection, friendship, relationship or gratitude. This will support a contract that has been performed, and then only between the parties themselves, but will not answer for an executory contract ; that is, one to be performed in the future. An insufficient consideration may be defined as one that is gratuitous, illegal, immoral or impossible. There are exceptions to the gratuitous consideration ; for instance, in cases of salvage, and also in case of labor performed for a party with his knowledge, but not his expressed consent. If you work for me, I knowing what you are doing, and do not interfere and prevent you, it raises an implied promise, on my part, to pay what your services are reasonably worth, even though you may have commenced work without my order.

The subject-matter of a contract, or "the thing to be done, or omitted by one or both parties." There are certain contracts, however, which the law will not enforce. That is, if the thing to be done is illegal, against the law, immoral, that is, contrary to good morals, impolitic (injurious to, or interfering with the public welfare), in general restraint of trade, such as an agreement not to conduct a certain lawful business anywhere, either for a limited or unlimited time, in general restraint of marriage, such as a condition that a child may not marry any person living in the same country or following some particular profession or trade, if the subject-matter operates as a fraud on third persons, obstructs public justice, that is, suppresses evidence, bribes witnesses or officers, or if already enjoined by

law, because an agreement to do what is already required of one will not increase the obligation, or if it has infused into it, in any way, the element of fraud, we cannot expect the law to enforce the contract.

Construction of Contracts.—In the construction of contracts no particular form of words is necessary, but the intention of the parties should be clearly and definitely stated, and it should contain all the elements above defined.

REMEDIES.

The fundamental rule of Law is that *every one will do what he promises.* But all men do not always obey this rule, and the law gives a right to have all contracts with them fulfilled. It also supplies means of enforcing this right. These means are called *Remedies.*

Kinds of Remedies.—Civil and Criminal.

Criminal Remedies.—When a man does an act that no one is allowed to do, such as murder, stealing, etc., he commits an offense against the State, and the State will punish him by imprisonment, fine, or death. This is called a criminal remedy.

Civil Remedies.—A civil remedy is the means of enforcing a personal right or redressing a personal wrong. These do not belong to the province of Commercial Law.

Civil remedies are divided into two classes, Compensatory and Preventive.

Compensatory Remedy.—A compensatory remedy consists of money (called damages) which the court compels the party at fault to pay to the injured party.

Liquidated or Exemplary Damages.—When the parties to a contract agree that in case either fails to perform it he shall pay the other a certain sum, that is called liquidated damages. The injured party can usually recover in an action no more than the sum which was agreed upon; and

again there are some cases where a man who has been guilty of some wrong doing is bound to pay more than the actual damages suffered by his opponent. This additional sum is called smart money, or exemplary damages. It is not allowed for a simple breach of contract, but only in cases where there has been some wilful or malicious wrong done.

Preventive Remedy.—A preventive remedy is the means whereby one is prevented from causing further injury. Thus, when one has agreed not to carry on a certain business in a certain town, in addition to compensating one for loss caused by the breach of this contract, the court may compel the promisor to refrain from carrying on said business.

This order or remedy is called in law an Injunction. Both of these remedies often fail to repair the loss.

CONTRACTS THAT ARE ILLEGAL.

An Agreement to do anything unlawful is void, and no court will attempt to enforce it. There are three general classes of illegal contracts. They are as follows:

1. Against public policy	1. In restraint of trade. 2. In restraint of marriage. 3. In opposition to public justice or government.
2. Immoral	1. Immoral life or publications. 2. Sabbath desecration. 3. Bets or wagers.
3. Fraudulent	1. Fraudulent upon either party. 2. Fraudulent upon third parties.

(1) **Those Against Public Policy.**—The policy of a community is to advance the public good, hence, whatever contracts are opposed to the general good are said to injuriously affect public policy, and are, therefore, void. Among such may be mentioned:

Contracts in Restraint of Trade; as where a merchant would sell out his business and agree not to engage in business again of any kind, it would be void, because lawful trade is considered for the public good. He could, however, bind himself not to engage in business again in a particular locality, or in a certain line of business, as it would only be a partial restraint of trade. Partial restraint, however, if the nature of the case makes it questionable, can only be determined by the court after reviewing all the circumstances in that particular case. All combines, as among manufacturers by which prices are forced up, are illegal. Organized strikes, by which the actions of others are to be coerced, are illegal.

In Restraint of Marriage.—Marriage is held to be in the public good, hence any contract which wholly restrains marriage is void. The condition in a bequest in a will to a child that he or she does not marry is void, but, nevertheless, the bequest is good. A partial restraint of marriage, where it is reasonable, may be valid, as where a bequest is left to a child on the condition that marriage should not be effected until the age of twenty-one, or say twenty-five years, it would be valid because it would merely fix a date when there would be less danger of contracting an ill-advised marriage. But if the time fixed would be, say fifty years of age, it would be void, because that would be unreasonable.

A husband's bequest to his wife on the condition that she does not marry again is legal, because she has once been married, hence not in restraint of marriage. A contract to pay an agent for contracting a desirable marriage is void; and even the money paid upon such a contract may be recovered.

Contracts to Obstruct the Course of Justice are void. The agreement of a public official to do something contrary to his duty cannot be enforced, and money promised him

to use extra exertions in the discharge of his duty in a particular course cannot be recovered.

(2) **Immoral Contracts** are void. A contract to lead an immoral life is void. But after an immoral course has been begun and an obligation has been given as compensation for damages, the obligation can be enforced. Contracts to publish, sell or forward obscene literature are void. Contracts made on Sunday are void, because that day has been set apart as a day of rest, and business pursuits prohibited. All bets, wagers, gambling lotteries, raffles, buying on margin and promising to pay for votes are void. Contracts to defraud the Government by smuggling, or to give an incorrect invoice, are void, and all money promised for such service cannot be collected.

(3) **Fraudulent Contracts** are voidable. Examples of fraud: A statement of facts that the party making the statement knows to be false. A concealment of facts that are known to one and not readily discernible to the other, and yet such as should be revealed, are samples of fraudulent contracts. The party who has been defrauded may void the contract if he wishes, or he may affirm it and compel the other party to perform it. If he wishes to void it two things are necessary: (1.) He must not accept any benefit derived from it, or continue to act under it after he has discovered the fraud. (2.) He must give prompt notice of the fraud after he has discovered it. If both parties practice fraud neither one can enforce the contract against the other. A promissory note obtained through fraud cannot be collected by the party who obtained it, but upon coming into the hands of a third party, before maturity, for value, and who did not know of the fraud, it would be valid and good against the maker.

An Insolvent's Misrepresentation.—An insolvent person representing himself as solvent in order to obtain goods on credit, is guilty of a fraudulent act. The seller discover-

ing it may cancel the contract, or recover the goods if they have been shipped. An insolvent person need not disclose that fact to a creditor from whom he is purchasing goods unless he is questioned as to his financial standing.

Fraudulent Upon Third Parties.—Underbidders at auction sales, employed secretly to run up prices higher than the real value of the articles, are fraudulent towards third parties. A purchaser whose bid has been forced up by such fictitious bidding immediately preceding his last bid, may void his purchase. If underbidders are employed, and that fact publicly announced before the sale, it is not fraudulent. The owner may also fix a price below which the goods will not be sold, or he may reserve one bid for himself.

Innocent Purchasers for Value.—A person obtaining goods, or a promissory note, or any other property through fraud, and transferring them to an innocent third party for value, gives them a valid title.

Impossibilities.—A contract to do an impossibility is void because it cannot be fulfilled. If a person were to agree to move a farm from one county to another the contract could not be enforced. The thing to be done, however, must be impossible from the nature of things. Suppose A agrees to build a house for B, and complete it by a certain date. A strike among the mechanics he employs rendering him unable to finish his work by specified time, this would not be counted a void contract, as the circumstances were exceptional, and might have been foreseen or prevented. C agrees to build a boat for D, but is unable from lack of skill. This would not void the contract, nor would the sickness of one of the parties be excuse to void the contract.

IMPORTANT STATUTES REGARDING CONTRACTS.

Statute of Frauds and Perjuries.—This Statute was passed in the reign of Charles II. of England, and still

exists there. It has been adopted in this country and in the United States, with but slight change. It was designed to prevent the frequent commission of frauds and perjuries in regard to the enforcing of old claims, and various kinds of promises to answer for the debts of others. and providing that certain contracts had to be in writing to be binding. The following are the six clauses of the Statute which come within the scope of this work as they have been varied by our Statutes :

1. That leases of land for more than three years must be in writing.

2. Contracts for the sale of lands, or for any interest in lands, must be in writing and under seal.

3. Every agreement that by its terms is not to be performed within one year, must be in writing.

4. Every special promise to answer for the debt, default or miscarriage of another, must be in writing.

5. Every agreement, promise or undertaking made upon considerations of marriage, except a mutual promise to marry, must be in writing.

6. Contracts made for the sale of personal property, to the value of $40 and upwards, must be in writing, unless part or all of the goods have been delivered, or a part of the purchase price paid, or the sale is by auction.

EXPLANATION OF THE SIX CLAUSES OF THE STATUTE OF FRAUDS.

What is Sufficient Writing.—It is not necessary to have a technically prepared legal document. The Statute says that the agreement or contract, "or some note or memorandum thereof," must be in writing and signed by the party to be charged therewith, or his agent lawfully authorized. Hence, a note or memorandum is sufficient. An ordinary business letter is sufficient, provided it expresses the understanding of the parties.

Leases and Contracts for the Sale of Land.—These are the first and second classes of contracts which must be in writing. It is absolutely necessary that agreements relating to real estate should be in writing.

Agreements Not to be Performed within One Year.—This refers to an agreement which by its terms is not to be performed within one year from the making of it. If you engage to undertake some work for a party, and you are not to commence until a year hence, then the contract is not to be performed within a year from the time it is made, and it is voidable. There is nothing illegal about it, but you cannot compel the other party to accept your services, and he cannot compel you to work for him, unless the agreement is put in writing.

Promises to Answer for the Debt of Another.—It frequently happens that a creditor has a claim against another person who is not financially responsible, and tries to collect it from a third person, perhaps a relative, who is financially responsible. This gives rise to great hardships. To prevent this wrong the Statute enacts that a promise to pay the debt of another must be in writing. If you are selling goods to A, an irresponsible party, and you desire the promise of B to pay in the event of A failing to pay you, it will be necessary to get B's promise in writing, or allow you to charge the goods direct to him (that is, to B); in either case you will be able to collect from B.

Promises in Consideration of Marriage.—This does not refer to engagements or "mutual promises to marry." Such promises are excepted by the Statute. It refers to such agreements as are sometimes made regarding the disposition of property in contemplation of marriage. Marriage settlements come under this class. They are promises by one of the parties about to wed to give the other certain property in consideration of the marriage. All such promises are void unless in writing and signed.

Contracts for the Sale of Personal Property.—This provision will be referred to under the title, "Sales of Personal Property."

Statute of Limitations.—This enacts that after the lapse of a certain period of time no action can be sustained at law for the enforcement of a claim, but the party entitled to its benefit may waive by omitting to plead it. The period in Ontario and most of the States is six years, but in the Province of Quebec it is five years. This Statute does not extinguish the debt or release the debtor from the moral obligation, but it releases him from the legal obligation after the expiration of the time. The time is reckoned from the moment the debt falls due. In a promissory note or a bill of exchange the time begins from the last of the three days of grace, or from the date of the last payment made upon principal or interest.

Reasons for This Statute.—Old claims are supposed to be doubtful or ill-founded. The presumption is that if they are good and just they would have been paid or enforced within a reasonable time. The law is said to detest litigation, and hence the law quieting old claims. It is thought inexpedient and unjust that a person should be troubled with an old account or old note after years of silence as to the collection of it.

The time in which a suit must be begun on all special contracts, which includes bonds, leases, agreements under seal, etc., is generally twenty years. Actions on convertible or written contracts not under seal, notes, book debts, etc., must be commenced within the six years after their due date. Contracts under seal are considered more solemn, and are supposed to be entered into with greater deliberation, hence the longer time given for their release by the Statute. After the debt has run six years or twenty years, according to its nature, it is said to be outlawed.

Exemptions.—The limitation does not extend to bank

bills or bank notes, and other evidences of debt issued by banks. They are never outlawed by lapse of time. Also where there is a disability on the part of a creditor, and he cannot sue the claim when it is due, the time begins to count when the disability ceases. Examples: Persons under 21 years of age, insane persons, etc. On the infants coming of age, or the insane person becoming sane, the disability ceases. This disability must be in existence at the time when the debt becomes due. Further, when the debtor lives outside of the Province or State at the time when the debt is due, the six or twenty years, as the case may be, begins to count at the time of his return. A debtor leaving the Province or State after the debt is due does not make an exception, as proceedings for collection could have been taken before he left.

Extension of Time.—Any debt barred by the Statute of Limitations may be revived

1st. By a new promise in writing to pay the debt.
2nd. By a partial payment.

A new promise in writing to pay a debt barred by the Statute of Limitations will revive it for six years from date (and in case of negotiable paper from due date) of such promise in writing, or twenty years if the writing is under seal. As noted in a former section, the Statute does not extinguish the debt, but simply suspends the means of collecting it, hence the old debt is a valuable consideration for the new promise to pay it.

SOME HINTS ABOUT MAKING CONTRACTS AND THEIR INTERPRETATION.

Make Your Meaning Plain, especially if you are making a contract in writing, for the courts will presume that the writing expresses all the terms of the agreement. You will not be allowed to say that there was any understanding different from the plain language of the writing.

It is not very material whether the language is grammatical or whether the contract is written after the proper legal form. It is material, however, that the intention of the parties be clearly expressed. If this were always done many a lawsuit would be saved.

Although it is supposed that parties entering into a contract fully understand its terms, and will use language in expressing them that will explicitly give their meaning, yet it often happens that such is not the case; hence certain rules have been adopted to interpret them when ambiguity occurs. The following are those of chief importance:

1. THE INTENTION of the parties at the time the contract was made is considered, rather than the literal meaning of the words.

2. CUSTOM AND USAGE of that particular business and place will be regarded where the wording of the contract is doubtful.

3. THE TECHNICAL WORDS and phrases used will be given the meaning in which they are employed in that particular business.

4. VARIATIONS BETWEEN WRITING AND PRINTING. When one part of a contract is written and another printed, if they disagree the written portion will be accepted.

5. LIBERAL CONSTRUCTION. When the wording of a contract is ambiguous, it is a rule of the courts to construe it liberally, so as to give effect to the common sense of the agreement, even sometimes rejecting objectionable clauses and supplying omissions. But where the Statutes fix a definite meaning, they will invariably be construed in that sense.

6. CONSTRUCTION AS TO TIME. When no time is mentioned in the contract for its execution, the presumption is that it must be done at once, or in a reasonable time, and the courts will so construe it, according to the nature of the work to be done.

7. CONSTRUCTION AS TO PLACE. The law of the place where the contract is made governs its validity, and if it is to be performed there also, it will govern its interpretation. If it is to be performed in another Province or country, it must be in accordance with the laws of that Province or country, otherwise it is void.

PLACE OF SUIT.—In case of trial for breach of contract the place of contract determines where the suit should be held. Contracts made by letter have for their place where the letter of acceptance was signed, hence there the suit should be. The place of contract in regard to real estate is where the real estate is situated.

FORM OF CONTRACT.

MEMORANDUM OF AGREEMENT made and entered into this first day of September, A. D., 1897, BETWEEN William Foster, of the City of Hamilton, County of Wentworth, and Province of Ontario, merchant, of the first part, and John J. Smith, of the Town of Welland, County of Lincoln, Province of Ontario, contractor, of the second part.

1. That, etc. (*Here fill in the particular agreement entered into between the parties*).

As witness the hands and seals of the said parties the day and year first above written.

..... { Seal }

..... { Seal }

Signed, sealed and delivered in the presence of
.....

SHORT FORM OF CONTRACT FOR BUILDING.

Be it known that on this fifteenth day of September, A. D., 1897, it is agreed by and between A—, of Hamilton, and B—, of the same place, in the manner and form following, viz.:

The said B—, for the consideration hereinafter mentioned, doth for himself, his executors and administrators, promise and agree to and with the said A—, his executors, administrators and assigns, that he, the said B—, or his assigns, shall and will, within the space of three months next after the date hereof, in good and workmanlike manner, and according to the best of his art and skill, at Lot No. 204 Bond street, Hamilton, lay and substantially erect, build, set up, and finish one house, according to the draft or scheme hereinto annexed, of the dimensions following, and to compose the same of such stone, brick, timber and other materials as the said A— or his assigns shall find and provide for the same, in consideration whereof the said A— doth for himself, his executors and administrators, promise and agree to with the said B—, his executors, administrators and assigns, well and truly to pay or cause to be paid unto the said B— or his assigns, the sum of $1,200 in manner following—that is to say, the sum of $400 when the stone and brickwork is completed, the sum of $400 when the plastering and carpentering work are completed, and the sum of $400 thirty-one days after the work shall be completely finished; and also that he, the said A—, his executors, administrators or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick tile and timber, and other materials necessary for making and building the said house, and on performance of all the articles and agreements before mentioned. The said A— and the said B— do hereby bind themselves, their executors, etc., each to the other, in the penal sum of $500, firmly, by these presents in witness whereof, etc.

REVIEW QUESTIONS.

LAW.

1—What is law?
2—What is its object?
3—Into what two general classes is law divided?
4—Distinguish between Common law and Statute law?
5—Mention some other branches of law.
6—What is the source of the Common law of Canada?
7—What is Commercial law?
8—What is the source of Commercial law?
9—To what department of law does it belong?
10—What is Statute law?

CONTRACTS.

11—What is a contract?
12—Into what three classes are contracts divided?
13—What is the difference between oral and parol contracts?
14—What is a parol contract?
15—What is a written contract?
16—What is a contract by specialty?
17—Distinguish between expressed and implied contracts.
18—Distinguish between executed and executory contracts.
19—What are the four elements of a contract?
20—What is a contract of record?

CONTRACTS OF INFANTS.

21—Who is an infant in the eyes of the law?
22—What are the conditions of competency?
23—What kind of contracts can an infant make that are binding?
24—What is meant by avoidable contract?
25—When should an infant ratify a contract?
26—When must he repudiate a contract?
27—Under what circumstances is he liable for wrong-doing or fraud?
28—What are considered necessaries?
29—Who are other incompetent persons to make contracts?
30—To what extent can a married woman make contracts?
31—What has a noted author said about reason?
32—Mention the various conditions of incompetency?
33—What is meant by Coverture?

MUTUAL CONSENT.

34—What is the definition of the words mutual consent?
35—What does mutual consent consist of?
36—Suppose an offer and its acceptance to have been written, when is the contract complete?
37—When no time is mentioned for the completion of a contract, when must it be completed?
38—What is meant by a reasonable time?

CONSIDERATION.

39—Define "consideration"?
40—Is a contract binding without consideration?
41—What is an expressed consideration?
42—What is an implied consideration?
43—Explain a valuable consideration.
44—Explain a good consideration.
45—What kind of contracts will a good consideration support?
46—Define insufficient consideration?
47—Mention some exceptions to a gratuitous consideration?

SUBJECT-MATTER.

48—What is meant by the subject-matter of a contract?
49—What must it be?
50—What may it not be?
51—State three instances in which the subject-matter of a contract is illegal?
52—To what extent may a contract restrain marriage and yet be legal?
53—When is a contract illegal in restraint of trade?
54—What contracts are illegal because of immorality?
55—Mention other forms of illegal contracts?

TIME, ETC.

56—Time—Define and explain it.
57—In the construction of contracts, is any particular form necessary?
58—How should the intention of the parties be stated?
59—Is ignorance of the law a good plea for breach of contract?
60—Are written contracts any stronger than verbal contracts?

REMEDIES.

61—What is the fundamental rule of law?
62—What right does the law give to everyone?

63—What is a remedy?
64—Mention the kinds of remedies.
65—Distinguish between a criminal remedy and a civil remedy.
66—What is a compensatory remedy?
67—What are damages?
68—Define liquidated damages.
69—What is a preventative remedy?

CONTRACTS THAT ARE ILLEGAL.

70—Name the kinds of contracts that are illegal.
71—Why is a contract in restraint of trade illegal?
72—What is said of contracts in restraint of marriage?
73—Can contracts made on the Sabbath day be enforced?
74—How does the law look upon bets or wagers?
75—What is meant by a fraudulent contract?
76—Define "fraud."
77—What is the Statute of frauds and perjuries?
78—Give the source of this Statute.
79—What is its object?
80—Name the six clauses of the Statute of Frauds?
81—How should a contract be made?

STATUTE OF LIMITATIONS.

82—What is the Statute of Limitations?
83—What is its object?
84—How is the time computed?
85—Does the absence of the debtor affect it?
86—How may the debt be revived?
87—How may the time upon the outlawed debt be extended?
88—What is the effect of partial payment?

NEGOTIABLE PAPER.

By negotiable paper is meant business paper that can be transferred from one person to another for a valuable consideration. either by indorsement or delivery. The words which give it this negotiability are, "or order" or "or bearer." Paper which is transferrable by delivery is made payable to a certain person "or bearer," and that which is transferrable by indorsement is made payable to a certain person "or order," and requires to have the payee's name written across the back to be transferrable. The instruments classified under negotiable paper, for general business purposes, are Drafts or Bills of Exchange, Promissory Notes and Cheques, but are not limited to these. There are also the following business forms, which are negotiable by indorsement: Certificates of Deposit, Letters of Credit, Warehouse Receipts, Bills of Landing, Coupon Bonds, etc.

A Bill of Exchange or Draft.—The Draft is the oldest kind of negotiable paper. It was originally invented among merchants as a security for the more easy remittance of money from one city or country to another. Indeed, it is said to have had its origin, like many of the world's conveniences for the transaction of mercantile business, with the Jew; it is, in fact, the offspring of persecution. Early in the 14th century the Jews were banished from country to country. The Draft or Bill of Exchange formed a convenient means of carrying their property with them. They were also largely engaged in trading on the Mediterranian

coasts, where it was used for transferring property from one country or place to another. It has to-day become an important part of the commercial currency of the world; it facilitates the great operations of commerce; it increases the circulation and enlarges the nominal capital in trade.

Definition.—A draft is simply a request by one person to another to pay a third person a certain sum of money mentioned in the paper. Drafts are usually drawn in one of three ways—"at sight," "a certain number of days after sight," or "a certain number of days after date."

The theory upon which this request, or draft is based, is that the Drawee has funds in his hands belonging to the Drawer equal to the amount for which the draft is drawn. Based upon this theory, the Drawee does not become a party to the paper until he accepts it, and the paper is then called his acceptance. The theory that the Drawee has funds in his possession belonging to the Drawer is not always true, however, for drafts are sometimes drawn and accepted for accommodation.

When the original theory is followed, the amount of the draft drawn would show so much actual value in circulation, but when they are drawn for accommodation a false credit is established, and we are led to believe the actual wealth of a community greater than it really is, for it no longer represents capital or money invested in business, while if the true theory is followed the value of the bills or drafts in circulation represent just so much actual value.

Bills of Exchange are of Two Kinds—foreign and inland. A foreign bill is one drawn by a person in one country on a person in another country. An inland bill is one drawn by a person of a country upon another of the same country. To illustrate: A bill drawn by a Toronto merchant upon one in New York would be called a foreign Bill of Exchange; so also would one drawn by the same party upon a merchant in London, Eng.; while one drawn

by him upon a merchant in Ottawa or Hamilton would be called an inland Bill of Exchange.

Acceptances.—The nature and form of a Draft or Bill of Exchange calls for its presentation to the person upon whom it is drawn for acceptance, which is done by writing across the face of the bill the word "Accepted," with the day of the month, or the direction to a third person to pay it. It also requires that the acceptance be signed.

Presentment.—The bill should be presented for acceptance to the Drawee or his agent, within a reasonable time from the day when drawn. It should be made during the regular business hours of the day, and in the case of banks, during bank hours. If a bill is addressed to the Drawee at a particular place, then presentation must be made at that place. If not so addressed, then at his place of business or residence. When this cannot be ascertained the holder must make diligent inquiry, and present the bill wherever he is found to be. Should the Drawee remove from the country the holder is not bound to follow him.

Non-Acceptance.—When a bill has been presented for acceptance or payment, and it has been refused, it is said to have been dishonored, and when the bill has been dishonored by non-acceptance it is the duty of the holder to protest it and have notice of dishonor sent to the Drawer and all parties upon whom he intends to look for payment.

Promissory Notes.—A promissory note is an unconditional written promise to pay a certain sum of money at a specified time, or on the happening of a certain event. Observe carefully the three points in this definition—1st, there must be no conditions expressed; if there be a condition its character as a promissory note is destroyed, and it becomes nothing but a written agreement binding on both parties, but not negotiable. 2nd, it is payable in money; if it is made payable in anything except money its negotiability is destroyed, and it is called a chattel note. 3rd, it must

be paid at some specific time, or on the happening of some certain event; thus: if I promise to pay a note on my next birthday it is valid, but a note made payable upon the day I should sail for England would not be a valid instrument.

Parties to a Note.—The original parties to a note are the Maker and Payee. The Maker is the person who signs it, and thus becomes primarily responsible for its payment. The Payee is the person to whom or to whose order it is made payable. The subsequent parties to a note are the endorsers, if there be any.

Distinction in Parties.—It is very important to consider clearly the difference clearly between the parties to a note and the parties to a Bill of Exchange or Draft. If I make a note to you I promise to pay, and am therefore known as the promissor or maker, and you are the promissee or payee; but if it is payable to you or order, and you endorse it by writing your name across the back, you are then styled "the endorser," and if you write above your signature on the back, "Pay to John Smith or order," then Smith becomes the endorsee. But when a draft is drawn no one promises to pay: it is simply a written order upon a second person to pay a third. In a draft the Drawer and Payee are frequently the same person. For instance: A could make a draft in favor of himself upon B: A would therefore occupy the dual position of Drawer and Payee.

Competency.—It is presumed that in all negotiable paper there is a valuable consideration. In this class of contracts it is implied by the words "*value received.*" Between the original parties to a note failure of consideration may be shown, but where the note passes into the hands of an innocent third holder ("one not having knowledge of any legal defence existing against it") before maturity, and is obtained for value and in good faith, it can be collected. If, however, it is transferred after maturity, the purchaser does not, in that case, obtain any better title to it than the

original owner possessed. The purchaser of an over due note assumes all its infirmities.

A Forged Note is void, and cannot be collected under any circumstances.

Kinds of Promissory Notes.—They are of several kinds, known as *Individual, Joint, Joint and Several, and Bank Notes.* In an *individual* note but one person makes the promise to pay. In a *joint* note the promise is made jointly by two or more persons. In a *joint* and *several* note each signer assumes the whole responsibility; but only one collection can be enforced.

When a note reads, "I promise to pay," and is signed by two persons, it is held to be a joint and several note, and in all joint and several notes the holder can sue either party alone or both together, as he chooses, but when the note reads, "We promise to pay," all concerned as makers must be joined in action, for it is then a joint, but not a joint and several note.

CHEQUES.

Definition.—A cheque is an unconditional order on a bank or banker to pay a specified sum of money to a person named therein, or to his order, on demand.

Cheques are the most important element that enters into business to-day, performing the greatest amount of service, —far more than all the money in the country.

Essentials of a Cheque.—

1st—The signature; it must be signed.

2nd—It must authorize the payment of a sum definitely stated.

3rd—It must be addressed to a bank or banker on whom it is drawn.

4th—It must be dated.

5th—It must be payable on demand after date.

6th—It must be payable to a payee.

Liability of the Parties.—The drawer of a cheque is liable to pay it if the bank does not, provided it has been duly presented for payment. The bank is bound to pay it if the drawer has funds applicable. No one, however, but the drawer can enforce this obligation resting on the bank.

Presentation.—It is the duty of the holder of a cheque to present it within a reasonable time. Failure to present it within a reasonable time may discharge the indorsers and drawer from liability provided the bank does not pay it. The bank may have funds of the drawer to pay the cheque if it is seasonably presented, but suppose it is held for an unreasonable length of time, and before it is presented the bank fails, the loss will not fall upon the drawer, for he had funds on deposit to meet it when it was given, and he had every reason to suppose that the holder would perform his duty by presenting it. When payment of a cheque is refused, notice of demand and non-payment must be given the drawer and indorsers at once. Cheques have no days of grace, and may be presented immediately, unless post dated.

Certification of Cheques.—The holder has no rights against the bank until the bank has accepted the cheque. It is accepted by certifying it. Certification is to a cheque what acceptance is to a bill. By that act the bank itself becomes responsible for the amount. It makes an agreement with the holder, and with anyone to whom he may transfer the cheque, that the drawer has the necessary funds on deposit, and that it will retain in its hands a sufficient sum to pay the cheque whenever presented; therefore the holder can retain the cheque as long as he pleases before presenting it. He runs no risk except that of the bank's insolvency.

A cheque has three phases, viz.:

1. As an order on demand, upon which the maker and indorsers are conditionally liable.

2. After certification it has the characteristic and value of a bank note. The liability then is transferred to the bank.

3. It is a voucher of the very best kind, and should be retained after its return by the bank as a receipt for the payment of the money.

Hints upon the Use of Cheques.—Present them for payment or have them certified as soon as possible after receiving them.

Draw them "to the order of" unless there is some good reason for drawing them payable to the bearer, for if they are made payable to the order of the payee they must bear his indorsement before being paid, and they thus become a voucher.

If an error is discovered after the cheque has been delivered, or for any other reason its recall is desired, stop payment by directing the bank not to pay it. Also, if a cheque has been made payable to order and is lost or stolen, a duplicate may be issued after directing the bank not to pay the original.

Forged Cheques.—If a bank pays a forged cheque it is the bank's own loss, and the money cannot be charged to the depositor whose name was forged.

If a bank pays a cheque which has been fraudulently raised—that is, the holder has increased the amount for which the cheque was made—it can usually charge the drawer with only the original amount.

But there are reasonable exceptions to this rule. If the drawer carelessly writes the cheque and leaves it so that it can be altered easily, he must suffer for this carelessness. Thus a drawer may fill out a blank cheque as follows:

Pay to Wm. Brown Eight Dollars $8 .

H. H. GOODMAN.

Notice how easily a dishonest man may place "Hundred" after the word *eight* and two cyphers after the figure 8, and make a cheque for eight hundred dollars when it was intended for eight dollars. In such a case as this the drawer would in all probability lose the seven hundred and ninety-two dollars. He is considered an accessory to the crime, and is punished by the loss of the amount of the raising of the cheque. The same is true also of all negotiable paper. Do not leave a blank space either before, in the middle or at the end of an amount in negotiable paper.

If there is a discrepancy between the amount in the figures and in the writing on any business form the writing is presumed to be correct, and is held as such.

Any alteration on the face of a negotiable instrument will vitiate it, unless the alteration is made and initialed by the maker.

A Certificate of Deposit is a written instrument issued by a bank, and certifies that a person mentioned therein has deposited a certain sum of money, payable to his order upon the surrender of the certificate properly indorsed. In nature it is the same as a certified cheque.

A Bill of Lading is "a memorandum or acknowledgment in writing, signed by the captain or master of a vessel, that he has received in good order on board his vessel therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order (the dangers of the seas excepted) at the place therein named for the delivery of the same, to the consignee therein named, or to his assignees, he or they paying freight for the same."

Two or more bills of lading are generally signed by the captain or master of the vessel; one is sent to the person to whom the goods are consigned, one the consignor keeps for himself, and one the captain or master of the vessel retains for his own use.

The bill of lading is a negotiable instrument; often whole cargoes are sold and delivered, simply by the indorsing and transferring of the bill of lading.

A Letter of Credit is a form given to persons who wish to travel in foreign countries. It is issued by a bank or banking house in the traveller's own country, to another bank or banking house in the countries he wishes to visit, requesting them to give the person named in the letter credit, or to pay him a sum of money.

An Accommodation Note is one for which no value has been given by the payee to the maker. In business it is often a matter of convenience or necessity for one man to borrow the name and credit of another. This is done by giving what is called an accommodation note or draft. Between the maker and indorser of such paper there is no consideration, and if the indorser pays the note at maturity he cannot recover of the maker. "The party who accommodates is never bound to the accommodated party."

Between the parties to the transaction the making of such a note, or the accepting of such a bill, is a mere loan of credit, designed to enable the borrower to raise money either in the market, at a bank, or in a particular manner; but when given under no restriction, but merely for the accommodation of the drawer, or payee, and is sent into the world, the holder, if he gave a *bona fide* consideration for it, is entitled to recover the amount, though he had full knowledge of the transaction.

On the other hand, if made for a special purpose, such as for discount at a particular bank, the maker has no right to use it in any other way; if he does so, it is a fraudulent perversion of the paper from its original object and design, and if the person receiving it from him knew of the circumstances and terms of the indorsement, he cannot recover on it against the indorser.

INDORSEMENT OF NEGOTIABLE PAPER.

An Indorsement is anything written on the back of a note or other commercial paper having relation to the paper itself.

Effects of Indorsement.—There are two distinct effects produced by the indorsement of negotiable paper. First or primary effect is to transfer the paper from the indorser to the indorsee. The second effect is to make the indorser conditionally liable for the payment of the paper. Indorsement is a contract by which the indorser makes himself liable to the indorsee and every subsequent holder. The person in whose favor the indorsement is made is called the indorsee.

Forms of Indorsement.—There are several different forms of indorsement, the most important of which are:

1. Blank Indorsement.
2. Full Indorsement.
3. Qualified Indorsement.
4. Restrictive Indorsement.

A Blank Indorsement is simply the signature of the indorser written upon the back of a negotiable paper, by which it is made payable, without further indorsement, to any person who may subsequently become its holder.

A Full Indorsement is one in which the indorser states, over his signature, to whose order the negotiable paper is payable. This is the safest form of indorsement, and the one generally used in business. If a note having a full indorsement were lost, no one could collect it but the indorsee.

A Qualified Indorsement is one in which the indorser relieves himself from responsibility for payment by writing over his signature the words "without recourse to me." The purpose of a qualified indorsement is to enable the indorser to transfer or sell his title to the paper without subjecting himself to liability for its payment after maturity.

ILLUSTRATIONS OF INDORSEMENT.

The following will illustrate the forms of indorsement for the different purposes mentioned on the preceding and following page. The proper place to indorse a business paper is on the back about two and a half inches from the end which was attached to the stub, or the end nearest the left hand when reading the form.

(Blank.)	(In full.)	(Restrictive.)	(Qualified.)
JAS. W. SMITH.	Pay to the order of W. H. BROWN. JAS. W. SMITH.	Pay to W. H. BROWN only. JAS. W. SMITH.	Pay to the order of W. H. BROWN without recourse to me JAS. W. SMITH.

The following illustrates some of the specific forms of endorsement:

(For Discount.)	(For Deposit.)	(For Identification.)	(To waive Protest)
For Discount only. L. L. HARRIS.	For Deposit only, to the credit of L. L. HARRIS,	JOHN BROWN is hereby identified by L. L. HARRIS.	I hereby waive demand and notice of protest L. L. HARRIS.

A Restrictive Indorsement, is one which restricts the payment of the negotiable paper to some particular person so that he could not transfer it if he wished, and the note is no longer negotiable. A restrictive indorsement may be made in two ways. 1st, the indorser may write above his signature, "pay to Jno. W. Smith only," or 2nd, he may restrict it as to plan of payment as well, by indorsing "pay to Jno. W. Smith only, at his office and not elsewhere or otherwise."

Specific Indorsements.—The following are the various forms to be written across the back of a note or draft for specific purposes :—The person indorsing a note may write above his name the words "for collection only." This form is used when sending a note or draft to a bank for collection. Or he may use the words "for discount only" when discounting the note or draft. Or "for deposit only," in the case of depositing a cheque or draft.

Another specific form of indorsement is indorsement for identification. Example: "*William Smith is hereby identified*" written above the signature would be an indorsement for identification. It is simply to identify the holder at the bank without making the indorser liable for payment.

Indorsements Revokable.—The mere indorsement of a bill does not transfer the title to it ; it must also be delivered to the indorsee or his agent before the title actually passes to him. An indorsement may therefore be withdrawn or revoked any time before delivery.

Every Indorsement is a Contract, by which the indorser makes himself liable to the holder and every subsequent indorser for payment of the paper, that is, that he will pay in case the maker fails to do so.

A PROTEST.

In order to hold the indorsers for payment on a note or draft that has not been paid at maturity, it is necessary to have it properly protested. A protest is therefore a formal

notice sent by a notary public (who is generally a lawyer) to the indorsers and maker of a note or acceptance that has not been paid at maturity, stating that the note or acceptance was presented for payment and that payment was refused, and that the holder looks to the indorsers for payment. A charge of 50 cents for the protest and 25 cents for each notice he sends may be made, together with the price of postage paid on them. This notice is usually sent by a notary public although the holder himself may do it, or an oral notice is also legal; but it is always better that it be put in writing.

Presentment for Payment.—The same law applies to the presentment of a note for payment as to that of a draft for acceptance. If the holder of an indorsed note neglects to have it properly protested, if payment has been refused at maturity, and the indorsers notified they will be discharged from liability. Such notice of protest must be made on the day the note is due, or at the latest, the day following. Each indorser is liable to every subsequent indorser, and may look to each preceding indorser for indemnity, but the security of the holder depends entirely upon having the protest made immediately upon the dishonor. Many a holder has lost his security by not presenting his paper for payment as the law requires.

May Waive Protest.—Every indorser of a note or bill, or drawer of a cheque, has a right of notice of non-payment or non-acceptance. But a person may give up *or waive* his right if he so desires. It must be done in writing, and on the back of the paper above his signature, as follows: "I hereby waive demand, protest and notice of dishonor."

The Day of Maturity is the day on which a note becomes legally due. According to the laws of the Provinces and most of the States a note is not legally due until three days after the expiration of the time specified. These days are called "days of grace."

Interest.—The legal rate of interest in Canada is 6 per cent. We have no usury law. A note made and nothing said in it about interest will not draw interest until maturity, but if not paid at maturity it will then commence to draw interest at 6 per cent. per annum. A note made for a higher rate of interest than 6 per cent., if not paid at maturity, will drop to 6 per cent. thereafter. For instance: If a note is drawn bearing interest at 8 per cent., in order that it shall continue to draw 8 per cent. after maturity, the words "with interest at 8 per cent. per annum before and after maturity until paid," must be written in it. A note drawing a lower rate than 6 per cent., if not paid at maturity, will draw 6 per cent. after maturity, unless otherwise provided in the note. Any rate of interest that a man agrees to pay and has written in the note can be collected. Compound interest cannot be collected unless it is agreed in the contract to pay it. Book debts differ from notes. A book debt overdue will not draw interest unless the merchant has it printed on his invoices and bills which he gives with the goods that interest will be charged after a certain date. Then it can be only 6 per cent., unless the debtor is willing to pay more. Simply having 8 per cent. or 10 per cent., as the case may be, printed on the invoice does not make the charge legal, and the debtor may refuse to pay anything over 6 per cent.

Lost Paper.—We have seen that a negotiable note payable to bearer, if it comes to a person before it is due and such person buys it believing that the seller has a right to it, may be collected of the maker even if it appears that the note has been stolen.

Possession is *prima facie* evidence of title, and if the rightful owner is dispossessed of negotiable paper, it is very difficult for him to collect the debt represented by it; for if the finder of a note sell it to a person, and that person have a valid title to it, then it is plain that the loser should not have the title to it, for that would vest the ownership of the

same paper in two different persons. Provision is made whereby a person who has lost a negotiable note may collect it. In regard to this the following rules apply:

1. It must appear that the party endeavoring to secure payment was the rightful owner of the instrument, and that it was lost while belonging to him.

2. The claimant must be able to prove its contents.

3. The party seeking to recover must give a bond sufficient to cover twice the amount of the lost instrument as an indemnity.

Due on a Legal Holiday.—Commercial paper maturing on a Sunday or on any legal holiday is payable the day following. If a note or draft falls due on a Sunday, and the Monday following is a legal holiday, it would not be payable until the following Tuesday.

REVIEW QUESTIONS.

On Negotiable Paper.

1—What is negotiable paper?
2—How may it be transferred?
3—How many kinds are there?
4—What is the oldest kind of negotiable paper?
5—For what purpose was the draft originally invented?
6—What is a draft or bill of exchange?
7—Upon what theory is it based?
8—When does the drawee become a party to the paper?
9—Are bills of exchange and promissory notes contracts?
10—What are parties to negotiable paper called?
11—Who are the original parties to a draft?
12—Who are the subsequent parties?
13—What is the rule in regard to the competency of parties?
14—What about the note of an infant? Explain why it is void.
15—If an infant affirms his note on coming of age, is it binding? Why?

Consideration.

16—Consideration—what is the presumption in regard to negotiable paper?
17—In this class of contracts, what words imply the consideration?
18—Between whom may failure of consideration be shown?
19—State in full what is said about the paper passing into the hands of an innocent holder?
20—Who is an innocent holder?
21—Can an innocent holder enforce collection on a bill or note that has been lost or stolen?

Negotiability, Time and Amount.

22—Negotiability, what words express it?
23—When payable to bearer, how may the paper be transferred?
24—How, when payable to order?
25—Time—what is referred to when we speak of time in connection with negotiable paper.
26—How should it be stated?
27—How is the amount expressed?
28—If the figures and written words differ, which is supposed to be correct?

Bills of Exchange, or Drafts.

29—Bills of exchange are of how many kinds?
30—What is a foreign bill?
31—What is an inland bill?
32—Give an example of each.

Acceptance.

33—Acceptance—when one merchant receives a draft upon another, what should he do?
34—What does the nature and form of a draft require?
35—Why is presentation necessary?
36—How is a draft or bill of exchange accepted?
37—When should a bill be presented for acceptance? By whom?
38—When is presentation necessary? Explain in full.
39—When should it be made?
40—Where should it be made?
41—How should it be made?
42—What is to be done in case the bill has been dishonored?
43—What do you mean by dishonored?

Notes.

44—What is a promissory note?
45—Who are the original parties?
46—Mention the different kinds of promissory notes.
47—Explain the difference between an individual and a joint, or a joint and several note.
48—A note reads, "I promise to pay," signed by two persons; another reads, "We promise to pay," signed by two persons. *Explain them.*

Cheques, Certificates of Deposit, Etc.

49—What is a cheque?
50—Explain the parties to a cheque?
51—Does it need to be presented for acceptance?
52—What is meant by "*certified?*"
53—What are the three phases of a cheque?
54—When a bank pays a forged cheque who bears the loss?
55—What is a certificate of deposit?
56—What is a bill of lading?
57—Is it negotiable?
58—Define letters of credit.
59—What is an accommodation note?

TRANSFER.

60—What is transfer?

61—What right does it give the indorsee?

62—When paper is transferred properly what does the holder acquire?

63—Suppose the paper to have been lost or stolen, how about the title?

64—In all such cases the holder's title is good, provided what?

65—Can you buy paper after maturity? Explain.

INDORSEMENT.

66—What is an indorsement?

67—For what purpose is it made?

68—How many kinds are there?

69—Name and define them.

DEMAND AND PAYMENT.

70—When is demand for payment made?

71—Explain days of grace.

72—If the last day of grace falls upon Sunday or a legal holiday, when is the paper due?

73—Is interest computed on days of grace?

74—Why is demand made?

75—By whom? Of whom? When and where should demand be made? Explain in full.

76—When should notice of dishonor be given, and how?

PROTEST.

77—What is a protest?

78—When is it necessary to protest (1) a note, (2) a draft?

79—What is the object of protesting?

80—How should it be done?

81—If the holder neglects to protest a dishonored note or draft, has he any remedy?

INTEREST.

82—What is the legal rate of interest for Canada?

83—When does a note bear interest?

84—How may a note be made to draw a higher rate than the legal rate after maturity?

85—When can interest be collected upon an account?

AGENCY.

Definition.—An agent is one who acts for, in the name and by the authority of another, who is called the principal.

Theory.—The theory of the law is that whatever business a man may do for himself, he may employ another to do for him; and whatever is done for him and by his authority, is to be held the same as though he did it himself.

Extent.—When we consider the fact that every clerk, laborer, or employee, is the agent of the one who employs him, we see how impossible it would be to conduct business without the medium of agency. There are in the employ of the Grand Trunk Railway thousands of persons, each of whom is an agent of the company. In the hands of the Harper Brothers, New York, there is concentrated a sufficient amount of capital to conduct and carry on the largest publishing house in the world, necessitating the employing of almost a small army of agents. While thus we see the extent, we also realize the importance of this medium of agency.

How long could Vanderbilt run his great railroad, if himself compelled to drive the engine or handle the brake, or how long would the Massey's alone and single handed, carry on their extensive business? Thus we see how each business and every enterprise needs its controlling, its guiding mind, which works through others.

How Established.—An agency may be established by a person permitting another to hold himself out to the world as his agent, by a verbal agreement, or by written contract;

as little form is necessary to employ an agent, as to hire a common day laborer. But when the agent is to have authority to execute a sealed instrument, as for the conveyance of real estate, his authority must be given under seal.

Appointment by Power of Attorney.—When the business to be done by the agent is of such a nature that he is required to sign notes, accept drafts, issue cheques, sign deeds, mortages, etc., or to make any contract for the principal under seal, a formal appointment under seal, called a power of attorney, is necessary. Such power of attorney may be either general or specific. A general power of attorney gives the agent full power to transact all the usual business of the principal. A specific power of attorney gives authority to do one or more particular acts, and no more.

FORM OF POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, that I, Robert C. Hunt, of the City of Toronto, County of York, Province of Ontario, gentleman, do nominate, constitute and appoint L. S. Wood, barrister, of the same place, my true and lawful attorney for me, in my name and on my behalf, to grant, bargain and sell all my real estate situate in said City of Toronto, and in my name to execute, acknowledge and deliver good and sufficient deeds of conveyance of the same, with or without covenants of warranty; also to collect, demand and receive the several amounts as they fall due upon the coupons of my railway stocks and bonds. And for all and every of the said purposes above mentioned, I do hereby give and grant unto the said L. S. Wood full and absolute power and authority to do and execute all acts, matters and things necessary to be done for the full and proper carrying out of all said matters entrusted to him, and do hereby ratify and confirm, and allow all and whatsoever the said L. S. Wood shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 31st day of December, 1897.

ROBERT C. HUNT. (Seal)

Signed, sealed and delivered in presence of

FRANK LOUDEN.

PROVING POWER OF ATTORNEY.

A power of attorney may be proved by being executed in presence of a notary public, who will place on the instrument his attestation of the execution.

Sub-Agents are those who act under other agents, for example A appoints B his agent to do certain acts, B may appoint C to do some of them for him. The agent is principal to the sub-agent, and is governed by just the same rules of principal and agent as exist between A and B. If the sub-agent acts fraudulently the agent suffers.

An agency is also often implied from the course of business; as for instance, a son who sells goods in his father's store, or receives payment of bills due him with his knowledge and without objection, is the agent of the father, and may bind him in subsequent transactions of the same nature.

Principal.—The principal is the person for whom the business is to be transacted. Generally every person of legal age and competent to contract, may act as principal. The principal and not the agent is bound by the agent's acts, so long as the agent does not exceed the authority given him.

Liability of Principal.—Under the contract of agency the principal becomes liable in two ways:

1. He is liable to third parties for the acts of the agent.
   1. Under the contract.
   2. For the wrongful acts of the agent (called torts).
   3. By the subsequent ratification of an unauthorized act.

2. He is liable to the agent for the fulfillment of his agreement.

Liability of Principal to Third Parties.—When an agent acts within the limits of his authority, the principal is liable to third persons, the same as though he transacted the business himself. If the agent violates the instructions given by the principal, the person with whom he is dealing being ignorant of the fact, or if the agent makes a fraudulent representation, the principal will be held liable. The principle of the law is that "when one or two innocent persons must suffer, the one should sustain the loss who has put it in the power of the wrong-doer to commit the wrong." but in cases of special agency the agent could not bind his principal to exceed his special authority.

In certain cases the principal is liable for the torts* committed by his agent. If an agent is pursuing the business of his agency, and by his negligence or unskillfulness injures another, the principal and not the agent is liable; for instance, suppose you are riding on an express train from Montreal to Toronto, rushing along with a speed that rivals the wind; a careless engineer has his engine standing upon the track of your train, when it ought to have been somewhere else; you go crashing into it, there is a wreck, and you are pulled from the debris only to find yourself a cripple for life. What do you do? Bring action for damages against the engineer, who is the agent of the railroad company, or do you say to the company itself, I have been injured through the carelessness of your agent, and to you I look for damages?

*A tort is the law term for wrong or injury, or a tort is an act committed wrongfully, and imparting to another some injury either directly or indirectly.

Should the act of the agent be wilful, the agent, and not the principal is liable; to illustrate, I am passing along the street in my carriage and your servant wilfully drives against me, the servant alone is liable. But had the act been one of carelessness, the principal would be liable.

Ratification.—Though the act of an agent be unauthorized, yet it may be ratified by the principal, so as to bind him from the beginning. If an agent reports what he has done, with some appearance of authority, the silence of his principal may be considered a ratification when the principal is reasonably bound to speak. The principal may ratify his agents unauthorized acts by express words, but it more commonly results from his accepting the act by receiving the benefits or proceed thereof.

The Principal is Liable to the Agent for all advances and expenses lawfully incurred about the agency; and for all commissions of salary agreed upon according to the usage of trade. He is also liable for damages sustained by the agent, without his own default, in following the directions of his principal.

Liability of Agent.—The agent's liabilities arise in two ways:

1. He is liable to his principal for a failure to properly perform his duties.

2. Under certain circumstances he is liable to third parties.

Duties of Agent to Principal.—The first duty of every agent is to obey instructions In determining the purport or extent of his instructions, custom and usage, in like cases, will often have great influence; because an agent is entitled to all the advantages which a known and established usage would give him, and the principal has also a right to expect that the agent will follow such custom. In cases of extreme necessity the agent may be excused for disobedience of orders; neither is he bound to obey when told to do an illegal or immoral act.

An agent is bound to use in the affairs of his principal all the care and skill which a reasonable man would use in his own, and he is also bound to the utmost good faith, for an agency implies personal confidence in the agent.

Liability of Agent to Third Parties—

An agent must transact all business in the name of his principal, or he will be personally liable; but if he should describe himself as agent for some unnamed principal, he is not liable unless he is proved to be the real principal. When a person has authority, as agent, to draw, accept or indorse a bill for another, he should do it in such a manner as to show that it is the act of his principal; as by signing it A. B. by C. D., his agent.* The custom of business men is to sign the name of the principal first, and then immediately under it add per C. D., agent. In other words he should sign so that it will appear to be the act of his principal. Should the agent sign his own name as indorser, drawer or acceptor, he will be personally liable unless he use some restrictive or qualifying words. Again, if an agent deposits in his own name money belonging to his principal, and the bank should fail, the agent and not the principal must bear the loss. When a person sells to an agent, and knows at the time who is his principal, and prefers to charge the agent alone, he cannot afterwards transfer the account to the principal.

An agent must keep an exact account of all his transactions, and must render the same to his principal.

The agent must not mix his property with that of the principal, so as to make it impossible to distinguish one from the other. If he does so the entire property will belong to the principal; but I believe that some of our courts have decided that where the property so mixed was of the same kind and quality, as, for instance, bushels of wheat, etc., each party may take the quantity belonging to him.

*The mere fact that a person acts as clerk to a merchant does not authorize him to sign notes or cheques in the name of his employer.

Commission Merchants.—A commission merchant is one who sells goods for another, receiving as compensation a certain percentage on the sales, called commission. The commission merchant very seldom discloses the name of his principal. He has actual possession of the goods to be sold; and is bound to take good and proper care of them, such as he would take of his own property of a similar nature.

In the sale of goods, the commission merchant should observe the instructions of his principal; but when he receives no instructions, must use his utmost skill and knowledge, and sell for the best prices.

It is a common practice for commission merchants to advance money upon goods consigned to them. In such cases they have a lien upon them for all cash advanced, and for expenses and commissions. "A lien on personal property is a right to hold it against the owner;" that is, the owner cannot take away his goods until he has paid the charges against them. The commission merchant may sell the goods in his possession in order to satisfy his claim, but must pay over the surplus to the owner.

Brokers.—The broker differs from the commission merchant, in that he does not have the goods of his principal in his possession. The broker is an agent, and his business is to effect the contract of sale, or purchase; and when this is done his agency ends.

There are many kinds of brokers; for instance, real estate, stock, insurance, exchange, merchandise, etc. "The broker, not having possession of the goods, has no lien upon them."

Agency, How Terminated.—The agency may be terminated by the principal or agent; that is, the principal has the right to revoke the authority given to his agent at his own pleasure; and the agent may renounce his agency, but when he does so he must notify his principal. Should the

agency be founded in a valuable consideration, the agent by renouncing it makes himself liable for all damages the principal may sustain thereby.

The agency may also be terminated by expiration of time, by the completion of the subject-matter, the insanity of either party, the bankruptcy of the principal, or by the death of either party.

REVIEW QUESTIONS.

On Agency.

1—Who is an agent?
2—Who is the principal?
3—What is the theory upon which agency is based?
4—Is agency very extensive?
5—How is an agency established?
6—Is any particular form necessary?
7—When is an agency implied? Illustrate.
8—Who may act as principal?
9—Who is bound by the agent's acts?

Liability of Principal.

10—To what extent is the principal liable to third parties?
11—If the agent in dealing with a person, violates his instructions, who is liable?
12—What principle of law declares the principal to be liable?
13—What is the law in cases of special agency?
14—Is the principal ever liable for an agent's torts? Illustrate.
15—What is a tort?
16—If the agent commits a willful wrong, who is liable, the principal or agent? Illustrate,
17—For what is the principal liable to the agent?

Duties of Agent.

18—What is the first duty of every agent?
19—How do the customs of business affect the duties of an agent?
20—How may an agent act in cases of extreme necessity?
21—What degree of care and skill must the agent use?
22—In whose name must the business be transacted?

23—Suppose a person in selling prefers to charge the agent, can he afterwards transfer the account?

24—What accounts must the agent keep?

25—State the law in regard to an agent mixing his own and his principal's property.

Power of Attorney.

26—What is a power of attorney?

27—How is it given?

28—Explain the difference between general and specific power of attorney.

29—Who is a sub-agent?

30—To whom is he responsible?

31—By what laws is he governed?

Commission Merchants and Brokers.

32—What is a commission merchant?

33—Does he disclose his principal?

34—What care must the commission merchant take of the goods in his possession?

35—What is his duty in regard to following instructions in selling goods?

36—Do commission merchants ever advance money upon goods consigned to them?

37—State the law in regard to the commission merchant's right of lien.

38—What is a broker?

39—How does he differ from the commission merchant?

40—Is the broker an agent?

41—Mention some of the different kinds of brokers.

42—Why have brokers no lien upon the goods?

43—How is agency terminated?

PARTNERSHIP.

A Partnership is the result of a voluntary contract, between two or more competent persons, to unite their money, labor, effects, credit or skill, or some or all of them in some lawful business, with the understanding that there shall be a community of profit. It is not essential that all the partners should furnish capital; one may furnish all the capital and the others the labor or skill, or vice versa.

Community of Profit.—This is the most essential element in the partnership contract. The idea of, profit must enter the contract or there can be no legal partnership. If it should be agreed that one of the partners should have all the profits the contract will not hold. "*A community*" of profit means that all the profits (after deducting the losses) shall go into one common fund, and are divided. In case it is necessary to prove the existence of a partnership at law, all that is necessary to show is that there is a common profit fund for the partners.

Distribution of Profits.—It is not essential that the partners should share the profits equally. They may share in any proportion that they may agree upon. If no proportion has been fixed, the law requires that they shall be divided equally.

A community of profits generally implies a community of losses, in a limited sense.

Other Names.—A partnership is sometimes referred to as a house, a co-partnership, but more commonly as a firm. Partnership may be general or special.

When the persons composing the partnership are referred to individually each one is called a partner.

Who May be a Competent Partner.—Any person capable of making a legal contract. According to the nature of their agreement, partners are divided as follows:

1. Ostensible partners.
2. Silent partners.
3. Limited partners.
4. Nominal partners.

An Ostensible Partner,—or as he is frequently called, a general partner,—is one who is known to the public as a partner. He generally appears at the place of business, and takes an active interest in the conduct of its affairs. He is represented in the firm name by having his name appear in it, and in every way advertises himself as a partner. He is liable to the creditors, to the amount of his investment, and to the extent of his private estate as well.

A Silent Partner, also called sleeping or dorment partner, is one whose name is not made known to the public. He contributes capital, and shares in the profits of the business, but endeavors to avoid all responsibility by keeping his partnership a secret. He is not represented in the firm name by anything more definite than "Co." (company); but he is liable for the debts of the firm, and may be sued for them just the same as the other partners—if his partnership is discovered. The reason for this is, a silent partner shares in the profits of a business, which are a part of the funds to which the creditors look for payment.

A Limited Partner, also known as a special partner, is one who limits his liability to a sum not less than the amount of his investment. He must be known as a limited partner, and the agreement as to his limited liability must be written in the articles of co-partnership when the partnership is formed, and be so registered.

This special or limited partner must not have anything to do with the management of the business, and should take no part in the work. He may give counsel to the firm, but if he takes any part in its management he makes himself a general partner, and is thus liable for all the debts of the firm.

A Nominal Partner is one who has no financial interest in the business, but who lends his name or credit to it. He is liable for the firm's debts, even though he should get no profits. He is a partner in name only. If he places himself in that position by such conduct as may reasonably lead others to suppose he is a partner, and induce them to trust the firm on the belief in his responsibility, he is liable as a partner.

Rights and Duties of Partners.—Every partnership is composed of two or more persons, which the law regards as but one. As to each other, their rights and duties are simply a matter of agreement; at the same time, however, they can require of each other sincere devotion and diligence to the business of the firm. Hence if any partner by misconduct, negligence, fraud or drunkenness, cause the firm to suffer loss, he will be liable to the other partners to the full extent of the loss. It is the duty of each partner, in making sales and purchases for the firm, to act for its benefit alone. He has no right to put his own interests in antagonism with those of the partnership.

Liabilities of Partners.—One of the important principles of partnership is, that the act of one partner binds all, so long as he keeps within the business of the partnership; outside of that he cannot bind the firm. For instance, one of a firm carrying on a hardware business could not bind the other partners in the purchase of a number of lots as a speculation in real estate; nor could he bind the firm by contract with a third party, who knows that such a contract would perpetrate a fraud on the firm, or who knows that the partner is acting without authority.

Another equally important principle is, that each partner is liable to third persons for the whole of the partnership debts to the full extent of his own property. It makes no difference what private agreement there may be between partners, they cannot limit their responsibility to outside parties, except of course as limited partners.

Admission of New Partner.—No person can be admitted into a firm without the free and full consent of every member. Partnership is a contract, and the principal element of every contract is consent.

The Firm Name may be just what the partners choose, and all contracts, notes, cheques, drafts, etc., should be made out in the firm name.* The partners may sue and be sued by their firm name.

The Undertaking.—The business of the firm may be any honest, lawful business; the manner in which it shall be conducted is a matter of agreement, and may be regulated at the pleasure of the parties.

Agreement Between Partners.—Partnership contracts are formed as all other contracts, by the agreement of the parties. The contract between the partners is called the "articles of co-partnership," "partnership deed," etc. It may be in express words, or by persons simply engaging in business together, without any definite stipulations. The agreement is therefore—

1. Implied.
2. Express
   1. Oral contract.
   2. Written simple contract.
   3. Written sealed contract.

Rights of Partners Against Each Other.—A partner often has the apparent authority to do a thing that he has not the right to do. Thus: Several persons may agree

*If a partner makes a note and signs it with his own name and his partner's name as a joint and several note, it does not bind his partner, for he had no authority to make such a note.

among themselves that each shall attend to a certain part of the business; notwithstanding the agreement, any partner may do an act outside of his agreement and bind the firm, but if loss is incurred, he will be liable to the other partners for it.

The articles should contain:

1. The description of the parties and the firm name
2. The nature of the business and the place where it is to be carried on. This is called the undertaking.
3. The investment of each partner, and the mode of dividing profits.
4. The date of commencement, and duration of the partnership.
5. Limitations of powers of partners, and their duties to one another.
6. Provisions for keeping accounts, and settlement of partnership affairs.
7. Provisions for dissolution and final adjustment.
8. Provisions for settlement in case of the death or incapacity of a partner.
9. Provisions for signing the firm's name.

Besides these there are various other provisions which could be profitably incorporated into the partnership contract, such as: None of the partners should be a candidate for a municipal office, or an active political partizan, without the consent of the firm: also that no partner should indorse, accept paper, or sign notes for others, or become bail or security for any person without consent of the firm; or to engage in any other business that would require investment, and possibly incur loss

A Precaution.—Although the law does not require it, every partnership agreement should be reduced to writing, with a great deal of deliberation and caution. It also should be signed, sealed and witnessed, which gives it still greater sanctity.

Partnership Notes.—When one of a firm makes a note, or indorses or accepts a bill of exchange, in the name of the firm, and apparently in the due course of business, the act shall be deemed that of partnership; especially when the bill or note has passed into the hands of a *bona fide* holder.

The person who, in good faith, receives a bill or note by indorsement from one of several partners, is not bound to apply to each of the others to ascertain if he assented to such indorsement. In the absence of all fraud on the part of the indorsee, the act will bind the firm; nor is the fact changed because the partner making the indorsement overstepped the authority given him in the articles of co-partnership, unless the indorsee knew that the same was done in fraud of the firm. If he knew this he could not hold the other partners.

When one party accepts a bill contrary to the articles of agreement, and in fraud of the rest, the holder cannot recover, even if ignorant of the fraud, unless he shows that he gave value for it.

The note of a firm is deemed by merchants to have been given in the fair legitimate course of the partnership business; and consequently the partner objecting to be made liable is bound to make out a case that will exonerate him.

The rule is that partners may bind each other, only in matters which relates to the business of the firm; outside of this, neither partner can bind the firm; yet if a note be made by one of a firm, in the firm name, out of the usual course of business, and then transferred to a *bona fide* holder, all the partners are responsible on the note. The reason is this—the law, in order to preserve the negotiability of the instrument, holds the members of a firm, who have the best means of knowing whether their associates be trustworthy.

Signing as Surety.—The rule is general that one member of a partnership cannot bind his co-partners by signing

notes or accepting or indorsing bills, in the firm name as surety, or for the accommodation of others. The law does not presume the lending of notes and making accommodation indorsements to be within the scope of ordinary partnership. It is the contract of the partner, not of the firm.

Non-Trading Firms.—Firms that are not trading firms, such as law firms, do not come under the partnership laws. They cannot give a note as a firm. They may sign it, but it is only a joint and several note, the same as though they were not associated in a partnership.

Profits Paid as Salary.—It is customary to give a chief clerk or bookkeeper a percentage of the profits of a business as a salary. It is the only instance where a person may share the profits of a business without being liable as a partner and in order to protect him from liability for the firm's debts there must be a definite contract to that effect.

Registration of Partnership.—In accordance with the Revised Statutes of Ontario, every partnership must be duly registered at the County Registry office in the county in which the business is conducted. The Statute provides:

1. That a declaration setting forth all the names of the partners, the firm-name, etc., be registered in the County Registry office, where the firm's business is to be carried on.

2. That any individual who wishes to add "& Co." to his name, or to use any special name other than his own, must register a declaration to that effect.

3. Such registration must be made within six months after the formation of the partnership.

4. In case of neglect to register a declaration of partnership the firm will be subject to a fine of $100, half of which will go to the Crown and the other half to the informant.

Form of Registration.—The following is a form of partnership declaration for registering in the County Registry office in compliance with the Revised Statutes of Ontario, Cap. 130:

Province of Ontario, }
County of Wentworth. }

We, John H. Brown, Wm. Henderson and Henry Smith, of the city of Hamilton, in the County of Wentworth, Province of Ontario, do hereby certify :

1. That we have carried on and intend to carry on a general wholesale and retail drug business, under the name and firm of Brown, Henderson & Co.

2. That the partnership has subsisted since the 1st day of September, 1897.

3. That we are and have been since the said date the only members of the said partnership.

Witnessed our hands this 1st day of October, A. D. 1897. { John H. Brown, William Henderson, Henry Smith.

Authority of Each Partner.—The authority that the law gives to each member of a firm is very great. Each member is a general agent of the entire firm and he may bind the firm in any transaction that he makes within the usual business of the firm.

He may borrow, loan, make promissory notes, indorse, make an assignment and may sell the whole stock of the business.

He cannot, however, bind the firm to a guarantee, or cannot bind it by giving the firm's note in payment of his own personal debts unless he be given authority to do so, or unless the act is afterwards ratified by the firm.

Partners cannot sue the firm or one another for an adjustment of their partnership affairs. Such an act would in reality be suing himself, as the firm does not exist without him. It would also have the effect of dissolving the partnership.

A partner though can sue his co-partner for money advanced before the partnership was formed, although the

money was loaned for the purpose of forming the partnership.

When the same person is a partner in two different firms one of the firms cannot sue the other, for this would make the same person both plaintiff and defendant.

Liabilities in Case of Insolvency.—In case a partnership becomes insolvent, the entire partnership property would be taken first to satisfy the firm's debts. If a portion of the debts remained unsatisfied, the private property of the partners outside of the concern would (subject to the priority of private creditors) be taken until the debts were fully satisfied, if enough could be found to satisfy them, if not it would apply upon them.

The exception to this is in the case of a limited or special partner, whose liability would be no greater than the capital he invested. In case he had drawn out any part of his capital he would be liable for the amount withdrawn.

DISSOLUTION OF PARTNERSHIP.

Duration.—The duration of a partnership is entirely a matter of agreement, if the parties choose to make it so. Hence if a limit is fixed for the duration, it will be presumed to continue until such period has elapsed.

A Partnership at Will.—When no limit has been fixed for the duration of the partnership, it may be dissolved at the pleasure of one or more of the partners, such a partnership is called *a partnership at will.*

Dissolution.—A partnership may be dissolved in anyone of the following ways;

1. At any time by the mutual consent of the partners.
2. By expiration of the time for which the partnership was formed.
3. By completion of the business for which it was formed.
4. By sale of a partners' interest.

5. By death or incapacity of a partner—unless provided for the articles of co-partnership.

6. The bankruptcy of a partner.

7. By decree of court.

Dissolution by Mutual Consent.—Of course the partners can by mutual agreement dissolve the partnership at any time, even though they have made a contract for a definite period. It must be with the consent of all the partners and if the partnership contract is under seal, the agreement for dissolution should also be under seal.

By Expiration of Time.—When the partnership has been formed for a definite period (such as one year, two years, five years, etc.) and that time has elapsed, the partnership stands dissolved.

By Completion of the Work.—If a partnership has been formed for a certain purpose and that end is realized, the partnership ceases, so far as the partners are concerned. Thus where A & B form a partnership to build a bridge, the partnership is completed as soon as the bridge is completed.

Sale of Partners Interests.—When one partner assigns or sells his interest, it dissolves the partnership, and the purchaser cannot become a member of the partnership.

The rule seems to be that a partner may sell his interest in the business at any time. But if he has entered into the partnership for a certain period and that period has not elapsed, he may be held liable to the other partners for selling his interest, which really amounts to a breach of his contract with the partners.

Death of a Partner.—The death of any partner of a firm at once dissolves the partnership, and the heirs of the deceased do not become partners.

It is competent, however, for the parties to vary this general result of law by an express agreement that the

death of one shall not operate as a dissolution. The same is true in case of insanity, etc. of a partner.

Bankruptcy.—As soon as one of the partners of a firm has been declared a bankrupt, the partnership is dissolved.

This is true because all the property of the bankrupt goes at once into the hands of the assignee.

Decree of Court.—There are conditions or circumstances which, within themselves, do not dissolve a partnership, but may be sufficient cause for a court to decree or declare it dissolved when the complaint is made by one or more of the partners who desire it dissolved. This may be done for the benefit of one member and against the desire of the rest. Thus, the insanity of a partner does not in itself dissolve the partnership, but is sufficient ground for dissolution by a court.

It may also be dissolved by judicial decree when it appears that the business is impracticable, or that it is founded upon wrong principles; as, where a partnership was for manufacturing steel by a new invention, and it was found after trial to be impracticable.

If there be gross misconduct of a partner, or abuse of good faith between them, the partnership may be declared dissolved.

Rights and Powers of Partners after Dissolution.—In case of dissolution, occasioned by death, bankruptcy or by law, the power of one partner to bind the firm ceases; he could not now renew a partnership note, nor accept a draft drawn on the firm so as to bind it; he can impose no new obligation, the partnership has ended.

But he can collect and receive payments due the firm, and adjust and liquidate accounts. The ordinary rule is that upon the dissolution of a partnership by death, the surviving partners are entitled to close up the affairs of the firm.

In Settling up the Affairs of a Firm each Partner—unless there is some agreement to the contrary, has the right to collect and receive moneys due the firm, to give receipts for the same and to adjust unsettled accounts. But no partner has a right to any share in the partnership property, until the debts of the business are first settled. Then he can claim his share of the remaining partnership funds.

Notice of Dissolution.—Upon the dissolution of a partnership or the withdrawal of any of the partners, public notice must be given. "This notice is necessary to protect the retiring partner or partners from continued responsibility; it should be given to all persons dealing regularly with the firm, either verbally, or by letter or circular sent by mail. To the business world in general, a publication in the newspapers is necessary, both in the local papers where the business has been carried on, and in the *Ontario Gazette* when the business has been conducted in Ontario, and for persons whose business has extended to the other Provinces notice must be given in the *Canada Gazette.*

Liabilities of a Retiring Partner.—When a partner retires from a firm his liability to outside parties does not necessarily cease. He is still liable for all debts contracted by the firm while he was a member of it. He should therefore see that all the debts are fully paid, unless the creditor agrees to accept the new firm for the debt and thus release him.

Registration of Notice of Dissolution.—A retiring partner in order to protect himself from the future liabilities of a firm must in addition to the notices and advertisements already mentioned register a declaration of the dissolution at the County Registry Office.

The following is a suitable form for placing in the Registry Office :

Province of Ontario,
County of Wentworth.

I, John H. Brown, formerly a member of the firm of Brown, Henderson & Co., carrying on a wholesale and retail drug business in the city of Hamilton, under the firm name of Brown & Henderson, do hereby certify that the said partnership was on the first day of June last dissolved.

Witness my hand this 3rd day of June, 1897.

JOHN H. BROWN.

REVIEW QUESTIONS.

ON PARTNERSHIP.

1—What is a partnership?

2—How may partners contribute?

3—What is the most essential element in a partnership contract?

4—How are profits distributed?

5—How shall they share when nothing has been said about the matter?

6—How are partnerships formed?

7—Who may enter into partnership?

8—Partners are of how many kinds? Name them?

9—What is an ostensible partner?

10—What is a nominal partner?

11—What is a silent partner?

12—Who is a limited partner?

13—State the law in regard to the liability of a nominal partner.

14—Do silent partners share in the profits of the firm?

15—State the law in regard to them and the reasons.

PARTNERS, THEIR RIGHTS AND DUTIES.

16—How many persons in every partnership?

17—How does the law regard them?

18—As to each other what are their rights and duties?

19—In buying, selling, what is the duty of each partner?

20—State one of the important principles of partnership, in regard to the acts of partners. Explain it.

21—For what amount of the partnership debts is each partner liable?

22—How will the partner's private agreement affect the above principle?

23—Can a new partner be admitted into the firm on the consent of one partner?

24—What shall the firm name be?

25—Can partners sue and be sued in the firm name?

26—What is meant by subject matter?

27—Can a partner put his own and his partner's name to a joint and several note, and bind his partner? (See foot note.)

28—What is implied in every partnership?

29—Is it necessary that every partner bring money into the firm? Explain.

Partnership Notes.

30—When one partner makes a note or accepts a bill in the firm name, what shall the act be deemed?

31—When is this especially true?

32—Is the one who receives in good faith a bill or note bound to ask each partner if he assented to such indorsement?

33—If an acceptance has been made by one partner contrary to the articles of agreement, can the holder recover?

34—How do merchants regard the firm note?

35—In what only can partners bind the firm?

36—State the exception in regard to note made by one partner out of the regular course of business. Give the reason why.

37—Can one partner bind the firm by signing as surety, or for the accommodation of others? Why not? Whose contract is it?

Articles of Co-partnership.

38—What is meant by the articles of co-partnership?

39—How may it be made? How should it be made?

40—What rights have partners against each other?

41—What should the articles of co-partnership contain?

42—Mention some of the important provisions that may be incorporated in the articles?

43—What are non-trading firms?

44—Can they give a note in the partnership name?

45—Is there any exception to the law that a person participating in the profits of a business, is liable for its debts? Explain?

46—When and where should a partnership be registered?

47—What is the penalty for neglecting to register?

Dissolution of Partnership.

48—What are the liabilities of retiring partners?

49—How may a partnership be dissolved?

50—Would the act of assignment make the assignee a partner? Why not?

51—In case of dissolution what power of the partner ceases?

52—What is the rule in regard to dissolution caused by the death of one partner?

53—In settling up the firm affairs what right does each partner have?

54—What right is it he does not have?

55—What notice must be given upon the dissolution of a firm?

56—How may this be done?

JOINT STOCK COMPANIES.

Joint Stock Companies.—Are corporations under a general or special act of the Legislature, for the purpose of promoting personal or public interests. The object to be secured by these companies is similar to that of simple partnership. The partners (or shareholders) of a joint stock company, however, are only liable to their creditors to the extent of their subscribed capital, whereas general partners in a business, as already stated, are liable to their creditors to the full extent of their property, whether invested in the business or not.

The incorporation of a joint stock company may be effected either under Dominion or Provincial Legislation.

Under the Dominion Legislation it may be either by special Act of Parliament or by Letters Patent under the Joint Stock Companies' Act. Banking, railway, telegraph, telephone and insurance companies must be incorporated by special act, as the powers they seek are so extensive that special legislation is necessary to determine their limit.

Under the Ontario Legislature incorporation is secured under the Joint Stock Companies' Letters Patent Act, found on page 1,443 of the Revised Statutes of Ontario for 1887, or by special act.

How Created.—Joint stock companies are the creation of a legislative body, and the body that gives them power to do business likewise makes laws for their government. The following is a short summary of such laws as they affect Joint Stock Companies in Canada :

There must be at least five members before they can become incorporated. The officers at the beginning are called provisional directors. When organization is complete regular officers are appointed.

Officers should be elected once a year at a general meeting of Stockholders.

A general statement of the affairs should be submitted to the Shareholders once a year at least.

The Company must report to the Government that incorporated it at least once a year, and oftener, if required.

Advantages of Incorporation are many, the following of which are chief ;

1. The business can be conducted on a much more extensive scale, as many more people can be interested in it than would be possible in an ordinary partnership.

2. The liability of shareholders is limited to the amount of stock they hold, an advantage of great consideration when compared with the dangers of partnership.

3. Property in the business is more easily transferred than in partnership. Paid up stock may be sold at any time.

4. A business under corporate powers possesses an element of permanency not found in an individual or partnership business. The death of any of the stockholders does not call for a dissolution, as it would in a partnership, but the heirs succeed to the shares and the business is unchanged.

5. Employees can be interested in the business and thus rendered permanent, and their services more valuable.

How to Form a Company.—The first thing to be done is to open the Stock Book, in which the subscribers enter their names for the number of shares they wish to take.

When one-half the proposed amount of stock has been subscribed and ten per cent. thereof paid in, then the appli-

cation may be made for letters patent. If under Provincial legislation, application should be made "To the Honorable Provincial Secretary," Toronto, and no fixed amount is required to be paid in. If it is under Dominion legislation, application should be made "To the Honorable Secretary of State," Ottawa.

Advertising Their Intention.—Before the application can be made for incorporation the applicants must publish in the *Ontario Gazette* or the *Canada Gazette*, as the case may be, for four consecutive numbers, their intention to apply for the same, giving the proposed name of the company, its purposes, amount of capital, number of shares, place of business, name, address and calling of the applicants and the names of the Provisional Directors.

The Petition.—It is about the first thing done, either by the solicitor or any person who may be doing the official correspondence, to communicate with the Provincial Secretary of State, concerning the formation of the company, and who will forward the necessary instructions and also a blank petition for the signatures of the applicants.

Then this petition is duly filled out according to the instructions and forwarded to the Provincial Secretary, or to the Secretary of State, as the case may be, accompanied by the Government fee, affidavits, etc. Upon receipt of this, notice will be immediately given in the *Official Gazette* of the issue of letters patent, when the parties named therein and their successors become a body corporate and politic by the name mentioned in the same.

If the proposed company is of such a nature as to require considerable advertising in order to create interest enough to sell the stock, then a prospectus would be issued first of all, setting forth the name of the company, where it is to be located, amount of capital, the number of shares into which it is to be divided, etc.

The name of the company must not be the same, or even similar to that of any other company, whether incorporated or not.

Board of Directors.—The directors are appointed by vote of the stockholders each year, and the directors have the whole management of the business during their term.

Books to be Kept.—The law requires certain books to be kept, giving the names of the stockholders and the shares owned by each, the amounts paid in on stock, the names and addresses of the directors.

These books are always to be open for inspection by creditors or the public in general.

Unpaid Stock.—Stock that has been subscribed for but not paid up stands as a resource, and is a security to the public.

Limited Liability.—In stock companies a shareholder is only liable to creditors to the amount of stock he has subscribed for. If that has been paid he is not liable to creditors for anything in case of bankruptcy of the company.

Double Liability applies only to chartered banks. A stockholder in a chartered bank is liable to creditors for double the amount of stock he subscribed for.

If it has all been paid up, and the bank fails, he is liable to be called upon for just that much more. If the stock has not all been paid up, he will have to pay the balance, and then another sum of same amount as the stock he owned.

Transfer of Stock.—Shares in a stock company are personal property. They may be sold or transferred if they have been paid up. If they are not all paid up they can only be sold by the consent of the directors.

Dividends can only be paid out of the profits. If there has not been a profit over the running expenses, no dividend can be declared, for if the officers were to declare a

dividend out of the capital, they would make themselves personally liable in case the company went into liquidation.

Liabilities of Companies.—They may be fined or assessed for damages, but. of course, cannot be imprisoned, because there is no personality.

The Word Limited must be affixed to their sign on the front of the building, and whenever the name of the company appears in advertisements, in their contracts, on their letter heads and accounts, etc. If this is not done a penalty of $20 per day is required by law for every day it is neglected.

This word "limited" indicates to the public the nature of the firm they are dealing with, the limited liability of the stockholders, hence the rigor of the law in requiring it to be ever present with the company's name.

REVIEW QUESTIONS.

JOINT STOCK COMPANIES.

1—What is a joint stock company?

2—How is it formed? Distinguish between a joint stock company and a partnership?

3—How and from whom does a joint stock company obtain its charter?

4—What are the advantages of incorporation?

5—What are the necessary steps to form a joint stock company?

6—Who are the directors? What duties do they perform?

7—What books are required to be kept by law?

8—To what extent are stockholders liable for the debts of the company?

9—What is double liability and stockholders for? What business are subject to it?

10—Can stock be transferred and how?

11—Out of what must dividends be paid?

12—What are the liabilities of companies?

13—What does the word "limited" indicate?

14—What use must be made of it?

15—What is the penalty for neglect to use the word limited in their advertisement?

CORPORATIONS.

Definition.—A corporation is an association consisting of individuals having certain legal capacities and corporate powers authorized by law. It is said to be an artificial person* having all the qualifications that an individal or natural person has, except that it cannot be punished by imprisonment.

Inportance and Object.—Corporations have already become very numerous in this country, and they are multiplying rapidly from year to year. They were formerly confined largely to such business as banking, insurance, express and railway transportation, but recently they are taking the place of individual enterprises in mining, manufacturing and trade; and when the additional fact of the enormous capital they represent and the power they wield are considered, the importance of the subject is sufficiently indicated. To carry on the immense business enterprises of to-day requires a larger capital than can usually be furnished by single individuals, and corporations are organized to meet this need.

Corporate Powers.—Every corporation has certain powers, the most important of which are as follows:

1. Perpetual succession, which means that it is not dissolved like a partnership may be, by the death or retirement of a member or the admission of a new member. This is the first essential of its existence.

*By an artificial person, it meant an association of natural persons or individuals, who are considered and treated in law as forming a new and distinct body or individual. These natural persons are its corporators or stockholders.

2. It has powers to sue and be sued.

3. It may enter into all the contracts that a natural person or individual can, if within the limits of its charter or act of incorporation.

4. It may make and use a corporate seal.

5. It may purchase, hold and convey property.

6. It can appoint officers and agents.

7. It may make by-laws for its own government.

Kinds of Corporations.—They are divided into:

1. Public and municipal.

2. Ecclesiastical.

3. Eleemosynary.

4. Private.

Public Corporations are those that are created by the Government for political or municipal purposes; cities, towns and villages are familiar illustrations of this class of corporations. They are given the power to legislate within certain limits. They may pass laws or by-laws, as they are usually called, for local purposes, such as improving streets, building bridges and sewers, regulating the sale of food products and the like. Such by-laws have the same force as statutes, but the power to make such local laws is subject to the control of the legislature. By the statutes of most, if not all provinces, counties, towns and school districts have corporate attributes. They may take and hold property, and may sue and are liable to be sued, in their corporate capacity. While they have some of the powers and privileges of corporations they differ from them greatly in other respects. They are, therefore, called quasi corporations, which means, as if, or in a manner, corporations.

Ecclesiastical Corporations are those formed for the purpose of managing and caring for the property of churches and congregations and the regulation of its doctrines.

Eleemosynary Corporations are those formed for charitable purposes, such as assisting the needy by way of alms, education or otherwise and caring for the sick and disabled. This includes hospitals and other charitable institutions, such as orphan's homes, etc., organized for the purpose of dispensing alms.

Civil Corporations.—These include all those organized for purposes other than charitable, and therefore comprise all, or nearly all, business corporations. They are either public or private.

Private Corporations are those established or founded by private enterprise, and this is true even though the purposes and operation of such corporations partake of a public nature. For example, banks, insurance companies and railroads doing business of a public nature, are private corporations.

Dissolution.—There are several ways in which corporations may be dissolved. The following are the ordinary methods, though they are not all applicable, as we shall see, to every corporation. They are (1) by limitation, (2) by act of the legislature, (3) by surrender of their rights to the government, and (4) by forfeiture of franchise.

Limitation.—This, of course, applies only to corporations that are incorporated for a specified time, as are most of those more recently organized for commercial purposes. The time of the duration of such a corporation is limited by its charter, or the general statute, and in either case when that time has elapsed it is dissolved by limitation.

Act of the Legislature.—Public corporations, such as towns, counties, villages, and cities, created for governmental purposes, may be modified or dissolved at any time by the same power that created them, that is by the legislature. But such dissolution cannot be made to destroy or abridge the rights of third parties against the corporation, nor their interest in its property. The charter of private corpora-

tions, however, as has been said, are contracts between the governing power and the incorporators, and hence unless the authority has been expressly reserved in the charter of a corporation, or the general law under which it was incorporated, the legislature is powerless to pass an act dissolving it.

Surrender of Rights.—Any private corporation may be dissolved by surrendering its franchise, that is, the rights and privileges possessed by it, to the government, but such dissolution will not be complete until the government has formally accepted the surrender.

Forfeiture of Franchise.—Corporations may forfeit all their rights and privileges by a wrong use of them, called misuser, or by a failure to use them, called nonuser, and either may result in dissolution. There is always a question in each particular case as to what degree of abuse will result in a forfeiture, and this as well as the failure to use the franchise must be determined by a court of law before the corporation will be actually dissolved.

Effect of Dissolution.—The general practice now is, in case of the dissolution of a corporation, for the court to appoint a person called a receiver to settle its affairs. It is his duty to take charge of all the corporate property, to dispose of it, and devote the proceeds after paying the expenses of receivership, to the satisfaction of the debts of the corporation, and if any balance remain, to divide it among the stockholders in proportion to their stock.

REVIEW QUESTIONS

Corporation.

1—Define corporation.
2—What is their importance and their object?
3—What are the powers of corporations?
4—How many kinds of corporations are there?
5—What is a public corporation?
6—What are ecclesastical corporations?
7—What are eleemosynary corporations?
8—What are civil corporations?
9—What are private corporations?
10—What is the franchise of a corporation?
11—How may a corporation forfeit its franchise?
12—In what ways may corporations be dissolved?
13—What is meant by corporations dissolved by limitation?
14—How may they be dissolved by act of the legislature?
15—What are the effects of dissolution?
16—Who is a receiver?

BAILMENT.

Definition.—A bailment is the delivery of goods in trust, upon a contract either expressed or implied, that the trust shall be faithfully executed on the part of the bailee, or a bailment is a delivery of some chattel by one party to another, to be held according to the special purpose of the delivery and to be returned or delivered over when that special purpose is accomplished.

Importance.—The law of bailment holds a very important place in commercial contracts. Examples of bailment are found in the every-day life of almost every person, whatever may be his business or station in life. Trustees, agents, factors, commission merchants, warehouse men, railroads, steamboat lines, stage drivers,—all have duties which are governed by the law of bailment. Indeed, there is no class of contracts so common as that of bailment, and the fact that a great number of such obligations are implied and not expressed, renders a careful study of the subject the more important.

Parties.—The parties to a bailment are the BAILOR and the BAILEE. The bailor is the party delivering the thing, and the bailee is the one to whom it is delivered.

Subject Matter.—The subject matter of a bailment is the thing bailed or delivered. The subject matter may be anything of a personal nature; it cannot be real estate.

Money is very seldom the subject matter of a bailment, but it may be. The delivery of goods to the bailee implies a return of the same thing. A loan of money is not a bailment because the same coin or bill is not to be returned, but money of an equivalent value. Where goods are delivered with the privilege that the bailee may return goods of the same kind and value, though not the identical goods, it

constitutes what is called a mutuum and is not to be confounded with the law of bailment.

Degrees of Diligence.—There are three degrees of diligence that different men are said to exercise over their personal property. These are designated by the terms Extraordinary, Ordinary and Slight.

An ordinary degree of diligence is such diligence or care as men of common prudence exercise over their own property.

Slight diligence is any degree below ordinary diligence. Extraordinary diligence is any degree above ordinary. It is of the greatest importance that every man should know what degree of care he is bound to bestow upon the property of other men, when such property comes into his possession,

Classification.—It is important that the student should have clearly in mind a systematic classification of this subject, and thus avoid confusion in a further study of the subject.

1st. Where goods are left in care of another, without hire, merely taken as a matter of friendship, or as a deposit. Such a person would only be liable for gross neglect. Only slight diligence is required.

2nd. Where goods are left in care of another person for hire. Such a person would be liable for common negligence, ordinary diligence is required.

3rd. Where goods are left in the hands of a person to be sold on commission. The consignee in such case must exercise ordinary diligence in caring for the goods. He has a lien on the goods for all his charges and commission.

4th. Where property is borrowed to be used for the benefit of the borrower. In such case the person borrowing, and giving nothing as compensation, is required to exercise extraordinary diligence in caring for the property, and will be liable to make good any damage.

5th. When property is left as a pledge or collateral security for a debt or loan. The holder must use ordinary diligence in caring for the goods. If the debt is not paid, the property may be sold for the debt; but what may be over the amount of the debt must be returned to the owner who gave it in pledge.

6th. Where one person obtains the use of property from another person and pays for its use. The borrower is liable for ordinary care. He is entitled to its exclusive use for the purpose agreed upon, and if he uses it for any other purpose he renders himself liable for any damage resulting therefrom, and also for additional hire.

As the parties are benefitted by such borrowing for hire, if any damage occurs, when using the property as agreed upon the borrower is not responsible unless he did not exercise ordinary care.

Pawnbrokers are persons who loan small sums of money, and take jewelry, furniture and other similar kinds of property as security. Their sign of "three balls" is required to be exhibited before their place of business. The signification of the three balls is said to be that the person who thus pledges his property has two chances to one against him of getting the property back again. They must also have a license.

Other Divisions of Bailment are taken up specially in the following articles on Common Carriers and Landlord and Tenant.

REVIEW QUESTIONS.

ON BAILMENTS.

1—Define Bailment.
2—Name and define the different parties?
3—What is the subject matter of bailment?
4—How many degrees of diligence are there? Name and define them.
5—How are bailments classified?
6—What is the rule when goods are left as a pledge, or collateral security for a debt?
7—Who are pawnbrokers?
8—What are the other divisions of bailment?

COMMON CARRIERS.

Common Carriers of Freight.—The carrying of a nation's products from one place to another is an important element in the business world. To the carrier, as the agent of commerce, we commit the wealth of merchandise that is transported along our rivers, sails over our lakes, or that is carried over the net-work of steel that covers our country.

The law gives this part of bailment great attention, and in order to give due security to property, it imposes upon the carrier extraordinary responsibility. In case of loss it decides against him, unless he can show it happened by natural causes, the act of God, or the public enemies. Again, on account of the opportunity he has for colluding with thieves and robbers, he is held responsible for all losses that occur by theft or robbery. Over against his extraordinary responsibilities, he has special and peculiar privileges. He is entitled to demand compensation in proportion to the risk assumed, and therefore has a right to know the value and the nature of the goods committed to his care. The owner, however, is not obliged to disclose the value of his goods, so long as he uses no disguise or deception in regard to them. If the carrier wishes to know their value it is his duty to ask.

The carrier is also entitled to demand his price in advance, and may refuse the goods if it is not paid ; but having once received and transported them to their destination, he may refuse to deliver them unless paid for.

A common carrier is one who, for a compensation, and as a regular business, undertakes to transport the goods of anyone who chooses to employ him, from place to place. "A person is not a common carrier who, on a single occasion, sends his servant to transport goods belonging to a particular individual, from one place to another, as from Hamilton to Toronto." But if he undertakes for hire to transport the goods of all persons indifferently, that is, all such as choose to employ him, he is a common carrier.

He need not follow this constantly; one who carries goods for hire, only occasionally, and as an incidental employment, assumes the responsibility of a common carrier.

Common Carriers are of two kinds, carriers by land and carriers by water. Among the first are stage coach proprietors, railway companies, truckmen, teamsters, express companies, etc. Whether such persons carry goods from one part of the same town to another, or from city to city, country to country, or from one state or kingdom to another, makes no difference: they are common carriers.

Of the second kind are the owners and masters of all kinds of vessels or water-craft, who carry freight of any kind for all who choose to employ them, whether it be along the coast, or from one continent to another, or in ferrying; and it makes no difference whether the vessel is propelled with mule, steam or electric power, or if moved along by the winds.

The duties and obligations of common carriers are much greater than those of the private carrier. The common carrier's duty is to receive for transportation all goods of the kind he is accustomed to carry. He may, however, demand payment in advance, and may refuse all articles of a dangerous quality; but has no right to charge one person a higher rate or price than he charges another. "It is his duty ordinarily to carry goods in the order in which they were received"; he should, however, give the prefer-

ence to perishable articles. He is bound to carry the goods to their destination, by the usual route, and to deliver them within a reasonable time to the consignee or his agent.

The carrier's responsibility begins upon the delivery of the goods for transportation. A delivery at the usual place of receiving freight or to the employees in the usual course of business is sufficient. This responsibility ceases when the goods have reached their destination and been actually delivered. Railway companies often send notice of the arrival of freight, and state they will not be liable for it if not removed within a certain time. It is the carriers first duty to send this notice; then if the consignee has a reasonable opportunity to remove the goods and does not do so, the carrier's liability ceases; but when the consignee or owner cannot be found, it is the carrier's duty to store the goods in some suitable warehouse to await the owner's demand, and he is accountable only for ordinary care.

The proper mode of delivery.—The law of custom regulates this. Thus, express companies employ conveyances, which can be sent from dwelling to dwelling, and consequently they are held bound to make actual, personal delivery at the owner's dwelling or place of business.

But the carrier by water cannot do this, he can proceed no further than the wharf, and no other delivery is demanded than can be made there; yet as we do not know the certain time of his arrival, notice must be sent when the vessel has reached her wharf.

The authorities differ as to whether railroad companies are required to send notice of arrival. However this may be, notice is given.

Carrier's notices.—Perhaps no one thing in the whole law of bailments has been the cause of so much controversy as carrier's notices. Every railroad, steamboat and ex-

press company have their notices printed upon their shipping receipts. These notices generally state under what conditions the carrier will be responsible; by them he sometimes endeavors to avoid his great responsibility.

The carrier cannot avoid his common-law liability by notice. "A notice is no evidence of assent on the part of the owner." The carrier can, however, make a special contract with the owner or shipper, that may limit his responsibility; but in the absence of such a contract he cannot exempt himself from liability.

A bill of lading, or receipt, delivered by the carrier to the shipper, and received by him without objection, has been held to be a special contract; however, the courts seem inclined to hold the carrier responsible as an insurer of the goods he carries, and while they may uphold a special contract, will not allow as a valid contract a mere notice, even when brought to the knowledge of the owner.

CARRIERS OF PASSENGERS.

Definition.—A common carrier of passengers is one who, for a consideration, carries persons from one place to another by means of suitable conveyances.

The proprietors of stage coaches, railroad companies, steamboat and street car companies are common carriers of passengers. They are not held to as strict responsibility as the carrier of goods. The common carrier of goods is an insurer of the merchandise he carries; but the common carrier of passengers is not an insurer of the passenger's safety; but yet, he is required to use the utmost care, and is responsible for the slightest negligence. Common carriers do not have the same control over passengers as they do over goods, for the passenger must retain his freedom of movement: at the same time he can require the carrier to use extreme diligence, but the carrier cannot be expected to prevent injuries caused by the carrier's own heedlessness or carelessness.

Negligence of passengers.—When the passenger, through his own carelessness, is the cause of his being injured, the carrier is not liable. Thus, if on attempting to board or alight from moving trains, thrusting head or arms from windows, standing on the platforms of moving cars, etc., accidents occur, the passenger cannot recover.

Who is a Passenger ?—"Every person is a passenger and entitled to be carried safely (so far as due care will provide for his safety) who is lawfully on the train. A mere 'deadhead' or person stealing a ride is not a passenger, and if he is hurt in a collision or train wreck, he recovers no damages. The question is not whether the person paid fare, but whether the company has come under any obligation to carry him safely. Where droves of cattle, hogs, sheep or other live stock, are sent to market over long railroad routes, it is common for the owner to go or send some one on the train to watch the animals, and water and feed them on the way.

This attendant pays no distinct fare : freight is paid on the animals and that covers the charge for carrying the attendant. Generally these passes contain a stipulation that the traveler assumes all risk of accident, and that if he is hurt, even by the negligence of persons in charge of the train, he will not demand damages. But the courts have held that these persons are passengers. The freight on the live stock is their fare, and the company is bound to use due care. The stipulation may protect the company from damages for a mere accident, but not for negligence.

Duties and privileges.—It is the duty of the carrier to receive all who offer to take passage, so long as they have room. To carry them the entire route, and not simply to carry but to carry them safely, to treat them civilly, and to run trains on the advertised time.

The carrier has the privilege of refusing to carry all persons of disorderly or offensive conduct, or any one who by

disease, character or habits, render themselves unfit traveling companions for the other passengers.

They may make reasonable rules and regulations in regard to passengers, such as the procuring of tickets and the exhibiting of them when called for. Persons who refuse to comply with these rules may be expelled from the conveyance, but the carrier must not use unnecessary force.

Baggage.—Common carriers of passengers are insurers of the passenger's baggage, and are liable until it is delivered, either to the owner at his destination or to another continuous line of travel; but they are liable only for proper baggage. The question then arises:

What constitutes a passenger's proper baggage, and for what is the carrier liable as such?—Such articles of necessities and personal convenience as are usually carried by passengers, with such a reasonable amount of money as would be required for traveling expenses are baggage; and in order to render the carrier liable for its loss, it must be placed under his care.

A traveler leaving his bag or coat in the seat of a railroad car in which he has been traveling will not make the company liable for his forgetfulness and loss.

"Where baggage is carried past its destination by a railway company, stored at the wrong station, stolen, and thereby lost to the owner, the company will be held responsible."

Tickets.—It is now generally agreed in the courts that railroad companies may require passengers to procure tickets before getting upon the train. If they have not done so, the company may make a moderate additional charge, or may expel the ticketless passenger from the train but they can do so only on the condition that they have the ticket office open, with an agent there to sell, a convenient time before the departure of the train; and also that notice of this requirement has been given.

A ticket reading "Good for this day only," can only be used on the day of its date. Passengers must surrender their tickets when called for. In some instances passengers have refused to do this unless furnished with a seat; but showing their ticket, have offered to surrender it as soon as the conductor woul ' get them one. The courts have decided this to be lawful.

Lost ticket.—In case the passenger loses his ticket, it is his own loss, and not that of the company. Reasonable time should be given him to find it: but if he cannot do so, he must pay fare a second time or be put off the train.

Moving trains.—Passengers who attempt to board or alight from moving trains generally do so at their own risk, and, if injured, cannot recover damages. In a late case it was decided that after the plaintiff left the train (which had gone beyond the station platform), he was not a passenger, and the company was not liable. In another case, where the train was running slowly, and the conductor told the passenger to jump, and he did so, and was injured, held that the company was liable. In still another case, plaintiff's child had left the train, which started before the mother could get off; she jumped and was injured; she recovered full damages.

REVIEW QUESTIONS.

On Common Carriers of Freight.

1—Is the simple carrying of the world's productions of any peculiar importance in commerce?

2—Give your reasons for your answer.

3—Why does the law impose upon the carriers such extraordinary responsibility?

4—In case of loss, when does the law decide against him?

5—Why should he be held responsible for losses that occur by theft or robbery?

6—State the privileges which counterbalance his great responsibility?

7—Has the carrier any right to ask the value of the goods he carries?

8—Should he neglect to do so, must the owner inform him?

9—When may the carrier demand his pay?

10—Is he obliged to deliver goods before he is paid?

Common Carriers.

11—Who is a common carrier?

12—Must he follow the business constantly?

13—Common carriers are of how many kinds.

14—Illustrate the first class?

15—Illustrate the second class?

Duties of Carriers.

16—Define the duties and rights of the common carrier.

17—When does his responsibility begin? When cease?

18—When must goods be delivered?

19—After the common carrier has given notice of the arrival of goods, and the owner fails to remove them, is the carrier responsible?

20—What is his duty in such a case?

21—What law determines the proper mode of delivery?

22—What is the duty of express companies on this point?

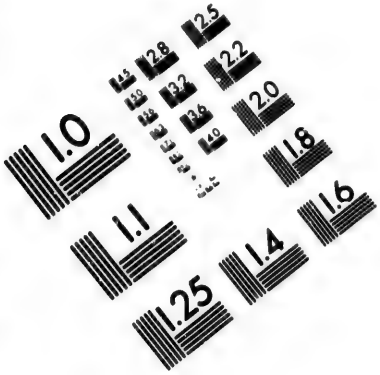
23—What is the duty of the carrier by water? Why?

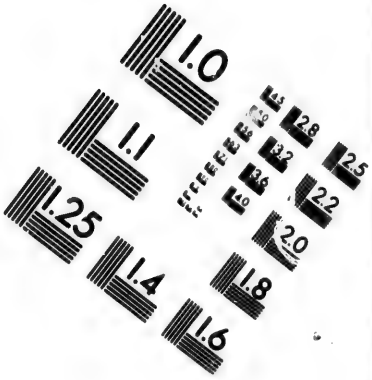
24—Is it customary for carriers to send notice of the arrival of freight?

25—Can the common carrier avoid his responsibility as an insurer of the goods he carries by giving notice?

26—Suppose the consignor reads the notice and keeps silent is he supposed to assent to its terms?

27—By his silence what is the consignor assumed to insist upon?





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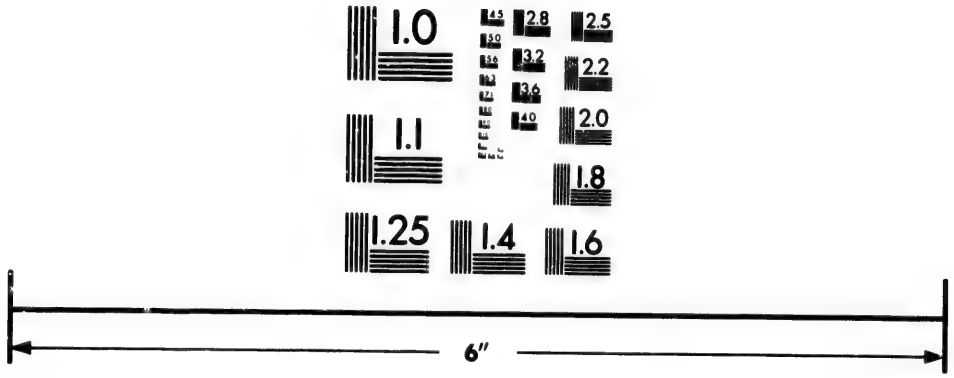

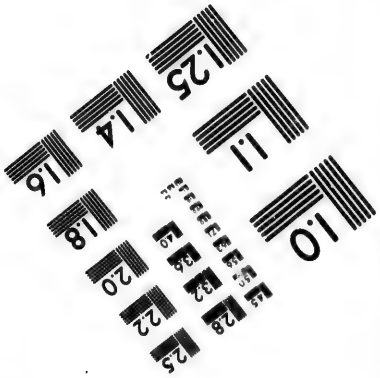

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Carriers of Passengers.

28—What is a common carrier of passengers?

29—Are they held to the same strict responsibility as the carrier of freight? If not, why not?

30—What is he required to use, and for what is he responsible?

31—Can the carrier be expected to prevent injuries caused by his own heedlessness?

32—Suppose the passenger is injured by his own negligence, who is liable? *Explain.*

Passengers.

33—Who is a passenger?

34—What protection should be given passengers?

35—What is the law in regard to persons who travel on freight trains as attendants of live stock, are they passengers?

36—State the duties and privileges of the carriers of passengers?

Baggage.

37—Are common carriers insurers of baggage?

38—What constitutes a person's proper baggage?

39—Are the samples of a commercial traveler baggage?

Tickets.

40—What is the rule in regard to procuring tickets before entering the train?

41—Suppose the ticket office is not open?

42—When can a ticket reading "good for this day only" be used?

43—When must the passenger surrender his ticket? Suppose he has no seat?

44—If the passenger lose his ticket whose loss is it?

45—Suppose he cannot find it, must he pay fare a second time?

46—At whose risk do passengers attempt to board or alight from moving trains?

47—State the cases given.

LANDLORD AND TENANT.

Landlord is the owner of houses and lands, and the person to whom he grants the use of them, for a specified time for a consideration called rent, is the tenant. In law the landlord is known as the lessor and the tenant the lessee. The same class of persons who can make a valid contract; that is, those of the full age of twenty-one years and of sound mind can make a valid lease.

Tenants.—There are three classes. 1st. For life. 2nd. For a definite time. 3rd. At will.

Lease is the name given to the contract between landlord and tenant. It may be either oral or written, or under seal.

A lease for "a definite time" may be effected either orally or in writing. It may be for any term of years.

An oral lease will only answer for a period of three years. A lease for a longer period than three years, and under seven years must be in writing.

A lease for over seven years must be in writing and under seal, signed by the parties themselves, or their duly authorized agents, who also have been appointed by writing under seal. A lease for over seven years must be registered, otherwise a person buying the property without notice of this lease could, by giving six months legal notice, eject the tenant.

The lease should state clearly all the conditions, as verbal promises and agreements do not avail in law where there is a written instrument.

Duplicate copies should always be made of a lease, and each party should retain one. Tenants have the exclusive use of the property while in their possession, and may even eject the landlord should he trespass.

A tenant cannot sub-let the premises without permission from the landlord. If he does the landlord may eject; it also renders his lease voidable.

Short Forms.—In the short forms of lease, now in general use throughout the country, the term "and to repair" has a very broad meaning; so much so, in fact, that unless modified a tenant may be compelled to rebuild in case of fire. Also the clause "to leave the premises in good "repair" must be modified in the same manner. This is best done in the following, or similar language: "Ordinary wear and tear, and accidents by fire and tempest excepted."

A tenant, must, however, even in this case, leave the premises in as good repair as he found them, "ordinary wear and tear," of course, "excepted."

Landlord's Covenant.—The only covenant the landlord makes is to give the tenant quiet enjoyment. If evicted by another person, who has a prior or better claim to the property, the tenant may recover from the landlord any damages that he may sustain.

Landlord's Rights.—Where there are other creditors, the landlord can only recover, prior to them, for one year's rent. After that he must take his share with the rest.

As far as distress is concerned, where there are no other creditors, he may distrain for six years' rent. After that he has a further remedy by way of action (or suit), and this action may be brought any time within twenty years on a lease under seal.

Rent cannot be sued or distrained for until it is due, even though the tenant may be leaving the premises. If the tenant were leaving the country, with the intent to defraud, the goods could be attached.

If a tenant removes goods fraudulently and clandestinely the landlord may follow for thirty days and distrain; otherwise he must distrain on the premises.

Taxes.—In all ordinary written or oral leases the landlord must pay the taxes, unless some express provision is made to the contrary.

The fact of a landlord agreeing to pay the taxes does not relieve the goods on the premises, though they belong to the tenant.

If a lease is given prior to a mortgage, the mortgagee takes it subject to the lessee, and vice versa if the mortgage is given prior to the lease.

Notice to Vacate.—In case of an overholding yearly tenancy, six clear months' notice must be given to quit, terminating with the end of the year. These must be calendar months, as in all other cases where months are used in contracts. Example: A yearly lease beginning July 10th, the notice to quit must be given before January 10th, so as to leave six clear calendar months before the expiration of the year. In case of a quarterly lease three months' notice must be given; and if the tenancy is monthly, then one clear month's notice must be given. If by the week, then a week's notice. There is no half yearly lease. A person renting, say for six months, it would simply be six consecutive months, and if he held over that time, one month's notice only need be given to quit.

A notice to quit, given either by the landlord or tenant, should be in writing, to be binding. An oral notice is sufficient, but it is better to give the notice in writing, as it is more easily proved. An ordinary letter containing the facts, handed to the other party, or sent by mail, will answer as well as a formal notice.

Expiration of Lease.—Where property is leased for a definite time, the lease expires at that date, and neither

party need give the other notice to terminate it. The tenant may go out, or the landlord may lease the property to another party. But where this first period has been passed and the tenant still remains in possession, he then becomes a " Tenant at Will," and then, after that, when he wishes to vacate, or the landlord desires him to vacate, this notice must be given.

Doubling the Rent.—If the tenant does not vacate the premises after his lease expires and demand for rent, and notice to quit has been given, the landlord may double the rent by giving the tenant notice in writing to that effect ; or the tenant may be evicted by obtaining an order from the County Judge.

Distraining for Rent.—If a tenant does not pay his rent, the landlord may distrain. In this case any person may act as a bailiff.

Rent may be payable in any way agreed upon, either in advance or at the end of the term. It might be a monthly tenancy, and yet the rent payable weekly ; or a yearly tenancy, with the rent payable monthly or quarterly. Whatever the agreement may be for payment, the tenant has the whole day on which the rent falls due in which to pay it, and no expense can be incurred until the day after the rent is due.

The landlord may distrain for rent the day after it is due. It must be done after sunrise and before sunset. The person distraining cannot break outside doors in order to seize, but after he once gains admission to the building he may then break open any inside doors that are not opened for him.

Distress may be made any time within six months after the expiration of the lease if the landlord still holds possession of the premises. If he has sold the property he cannot distrain ; neither can the new owner, but it may be

recovered by suit. Distress may be for six years rent if no other creditors are interested.

The Exemptions from a landlord's warrant are now quite numerous, and are the same as those from executions. (See Insolvency, page 104 for the list).

The goods belonging to third parties, as visitors, boarders or lodgers, are also exempt. Also any goods that may be on the premises for repairs or for any other purpose, if they are not in use by the tenant.

Furniture, sewing machines, musical instruments, etc., purchased on a lien agreement or not, are liable to seizure for rent if there is not enough other goods to satisfy the claim.

After the sale of his goods for rent, if the tenant should still remain in possession, the exempt goods also become liable for seizure if there is rent still due.

Resistance.—A tenant may resist the entrance of a bailiff or other person who may come with a landlord's warrant. Any time before the bailiff makes a list of the goods the tenant may retake them from him. After the bailiff makes a list of the goods seized and delivers it to the tenant, then the goods are said to be impounded and resistance must cease.

A tenant's goods cannot be seized if they are removed from the premises unless the bailiff saw them being taken away, or unless they had been removed fraudulently and clandestinely to prevent seizure for rent, that is, taken away in the night or in any other secret way.

Giving up possession.—The tenant who claims the benefit of the exemptions in case of a landlord distraining for rent, must give up possession of the premises forthwith or be ready and offer to do so. The offer must be made to the landlord or his agent, and the person making the seizure is considered his agent for this purpose.

The surrender of the possession in pursuance of the landlord's notice is a termination of the tenancy.

Seizing the Exempt Goods.—If the landlord desires to seize the exempt goods as well as the others he must give the tenant a written notice which will inform him of the amount claimed for rent in arrears, and if he neither pays the rent nor gives up possession, his goods and chattels may be sold to pay rent in arrears and costs. The notice must be something like the following.

Take notice. that I claim $.....for rent due to me in respect of the premises which you hold as my tenant, namely: (here briefly describe them, giving the number and street, or lot concession, etc.,) and unless the said rent is paid I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only for which you are entitled to claim exemption.

Take notice, further, that if you neither pay the said rent nor give me up possession of the said premises after the service of this notice, I am by law entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

This notice is given under the Act of the Legislature of Ontario respecting the Law of Landlord and Tenant.

Dated this..... day of.....A. D., 18

To (Tenant). (Signed) A. B. (Landlord).

Goods Seized for Other Debts.—If a tenant's goods have been seized for other debts the landlord cannot seize them again, nor sell them, but he may hold them until his claim is paid.

Penalty for Illegal Seizures.—If a landlord distrains for more than the amount due, the tenant can enter an action and recover treble the amount of over-seizure; and

in case of distraining before rent is due the tenant may recover double the amount of goods distrained.

Fixtures must be something of a personal character. Anything that is affixed to the freehold so that it cannot be separated without doing serious damage to the freehold becomes a part of it.

Anything that is sunk into the ground, as a well, trees, buildings of stone and brick are the same as the soil itself, and therefore, a part of the freehold. But buildings placed on stone boulders, or posts, or plate, are fixtures and may be removed without injury to the soil.

The machinery of a manufactory is also a fixture and may be removed,

Where there is doubt as to whether a certain fixture should be regarded as a fixture or be held as part of the freehold, the presumption is always in favor of the freehold.

It is an axiom in law "that the expression of one thing is an omission of all the rest," and for this reason if anything is mentioned as a fixture, other things, though of a kindred nature, would be supposed to be omitted and therefore remain a part of the freehold.

A tenant claiming anything as a fixture must remove the article promptly and make it known that he claims it, otherwise he waives his right to it.

As between the heir and the personal representative, the heir occupies the same position as the landlord and his right is, of course, prior.

A creditor can seize and sell immediately anything that has not become freehold, but any fixtures that have become freehold are governed by the same laws as real estate and therefore cannot be sold until the execution has been in the hands of the sheriff at least one year.

Repairs necessitated by natural decay, the landlord is supposed to make, but all breakages are to be made good by the tenant.

Boarders and Lodgers.—Lodgers are temporary lessees and are subject to the same laws and have similar privileges in respect to the rooms they occupy as a regular tenant. Their goods are not liable to seizure for their landlord's rent.

In case a boarder's or lodger's goods are distrained for rent due by his landlord, he must serve the superior landlord, or bailiff, or other person levying the distress with a written declaration that the tenant has no right of property or beneficial interest in the goods or chattels distrained or threatened to be distrained, and that they are the property or in the lawful possession of such boarder or lodger, and if he should owe the tenant for board or otherwise, he may state this amount and pay it over to the superior landlord, or the bailiff, or enough of it to discharge the landlord's claim if the boarder should owe more than that. With this declaration must be given an inventory of the articles referred to.

If the superior landlord or bailiff, after receiving this declaration and inventory, and after the boarder or lodger has paid over to him that much money, or offered so to do, he still proceeds with the distress, he is guilty of an illegal distress and the boarder may replevy such goods; and the superior landlord shall also be liable to an action.

Any such payment made by a boarder to the superior landlord is a valid payment on account due from him to the tenant

Every person who serves a distress shall give a copy of all costs and charges of the distress to the person on whose goods and chattels the distress is levied.

REVIEW QUESTIONS.

LANDLORD AND TENANT.

1—(*a*) Who is the landlord? (*b*) Who is the tenant?

2—Distinguish between the lessor and lessee?

3—How many classes of tenants are there?

4—Define "lease." How may it be made?

5—What is required to be done where a lease is for three years?

6—What is required to be done where a lease is for seven years?

7—What should a lease contain?

8—Can tenants sub-let?

9—Under what conditions may a tenant be required to rebuild in case of fire?

10—What is the "Landlord's Covenant"?

11—What are "Landlords' rights"?

12—He may distrain for rent under what circumstances?

13—Under what circumstances can goods belonging to the tenant be attached?

14—When and where may a landlord distrain for rent? Explain fully?

15—Who is responsible for taxes?

16—When should a notice to vacate be given? Mention three different circumstances.

17—Who is an overholding tenant?

18—What notice to quit is necessary before the expiration of a lease for a definite time?

19—How should a notice be given?

20—Under what circumstances may a landlord double the rent?

21—When may the landlord distrain?

22—What are the exemptions from seizure for rent?

23—Can goods belonging to boarders or visitors be seized for rent?

24—Can a landlord seize goods which are already under seizure for other debts?

25—What is the penalty for an illegal seizure?

26—What is meant by "fixtures"?

26—What is meant by "freehold"?

28—In case a doubt exists as to whether an article belongs as a fixture or a freehold, which is given the benefit of the doubt?

29—What repairs is a landlord required to make by law?

30—What resistance to seizure may the tenant make? If the goods are seized, when may the tenant retake them?

31—What procedure is necessary to seize exempt goods? Explain?

INSOLVENCY.

Insolvency and Bankruptcy are synonymous terms used in statutes and legal proceedings to express the inability of a person to pay his debts as they mature in the ordinary course of business. Hence, one's debts may greatly exceed his assets, and yet if his credit enables him to retire or renew his obligations as they fall due, he may not become liable to insolvency or bankruptcy proceedings.

On the other hand a person's assets may be considerably larger than his liabilities and still he may be in insolvent circumstances and liable to proceedings which may cause him to assign for the benefit of his creditors. It will therefore be seen that an insolvent is not always one who cannot pay a hundred cents on the dollar.

"In insolvent circumstances" and "unable to pay his debts" are co-extensive expressions and what has to be shown is not a state of insolvency, in the strict legal or commercial acceptation of the term, but the debtor's inability to pay his way and meet the demands of his creditors, and his want of means to pay them in full out of his assets realized upon a sale for cash or its equivalent".

No Insolvent Laws.—Under the British North America Act, the Dominion Parliament has exclusive jurisdiction in respect to the regulation of trade and commerce and in respect to bankruptcy and insolvency, while each Provincial Legislature has exclusive jurisdiction in respect to property and civil rights in the Province, but there is at

present no Dominion Insolvency Act in force, and in the absence of such the present Ontario Act respecting assignments and preferences by insolvent persons. (R. S. O., 1887, chapter 124,) governs.

ASSIGNMENTS.

Making an Assignment.—Any debtor may, in accordance with the provisions of the act above referred to, make an assignment for the general benefit of his creditors to a sheriff or any person residing in the Province. The party making the assignment is called an assigning debtor, and the person to whom he assigns is called the assignee. The assignment must be advertised at least for two insertions in a country or city paper circulating in the locality where the insolvent did business, and it must be inserted at least once in the *Ontario Gazette*. An assignment under the act is voluntary in the sense that it is optional on the part of the assignor whether to make it or not, but once made its effect cannot be controlled.

Registration of Assignment.—A copy of the assignment shall, within five days from the execution thereof, be registered, together with an affidavit of a witness, in the office of the clerk of the Cou ty Court of the county in which the assignor has property. Neglect to register and publish an assignment as set forth within five days from the execution thereof, the assignor shall be liable to a fine of $25 for each day which shall pass after the issue of the paper in which the notice should have appeared, and the assignee shall be subject to a like penalty. In case the assignee is a sheriff he shall not be liable for any of the penalties unless he has been paid or payment has been tendered him for the purposes. In case the assignment be not registered or published, an application may be made to the County Judge, or a Judge of the High Court to compel it. The omission, however, shall not invalidate the assignment.

If the assigning debtor owns lands or any interest in lands, the assignment should at once be registered, if not the debtor may, notwithstanding the assignment, convey the lands or his interest to a bona fide purchaser, who thus may gain priority over the assignee.

Form of Assignment.—"Every assignment made under the act for the general benefit of creditors shall be valid, if it is in the words following, that is to say—All my personal property, which may be seized and sold under execution and all my real estate, credits and effects, or in words to like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property credit and effects belonging at the time to the assignor, except such as by law are exempt from sale and seizure, or sale under execution.

EXEMPT FROM SEIZURE.

"Exempt from seizure," or "Sale under execution" refers to the exemptions under the act, the provisions of which are as follows:

"The following chattels are hereby declared exempt from seizure under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever in this Province, namely:

1. The bed, bedding and bedsteads (including a cradle) in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

3. One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of tongs and shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking-glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve

plates, twelve teacups, twelve saucers, one sugar basin, one milk jug, one teapot, twelve spoons, two pails, one washtub, one scrubbing brush, one blacking brush, one washboard, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this subdivision enumerated, not exceeding in value the sum of $150.

4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of $40;

5. One cow, six sheep, four hogs, and twelve hens, in all not exceeding the value of $75, and food therefor for thirty days, and one dog.

6. Tools and implements of or chattels ordinarily used in the debtor's occupation, to the value of $100.

7. Bees reared and kept in hives to the extent of fifteen hives.

8. The debtor may in lieu of tools and implements of or chattels ordinarily used in his occupation referred to in this Act, elect to receive the proceeds of the sale thereof up to $100, in which case the officer executing the writ shall pay the net proceeds of such sale if the same shall not exceed $100, or, if the same shall exceed $100, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption, and the sum to which a debtor shall be entitled hereunder shall be exempt from attachment or seizure at the instance of a creditor."

Duties of the Assignee.—It shall be the duty of the assignee to immediately inform himself as to the debtor, and his records of accounts, the names and residences of his creditors, and within five days from the date of the

assignment to convene a meeting of the creditors for the appointment of inspectors, and the giving of directions with reference to the disposal of the estate. This meeting is called by mailing, prepaid and registered, to every creditor known to him a circular, calling a meeting of creditors to be held in his office or other convenient place, not later than twelve days after the mailing of such notice. Also in the case of a request in writing signed by a majority of the creditors having claims duly proved of $100 and upwards, it shall be the duty of the assignee within two days after receiving such request, to call a meeting of the creditors at a time not later than twelve days after the assignee receives the request. In case of default the assignee shall be liable to a penalty of $25 for every day after the two days, until the meeting is called.

In case a sufficient number of creditors do not attend the meeting and fail to give directions with reference to the disposal of the estate, the Judge of the County Court may give all necessary directions.

If an assignee knows that a creditor has a claim, he cannot ignore it because it is not proved: the proper course is to call upon the creditor to prove it.

The following form of notice is sufficient:

NOTICE TO CREDITORS.

In the matter of

Notice is hereby given that of the of in the county of , carrying on business as at the said of , has made an assignment under R. S. O., 1887, c. 124, and amending Acts, of all his estate, credits and effects to , of the of , for the general benefit of his creditors.

A meeting of his creditors will be held at the office of , in the of on day, the 189 , at the hour of o'clock in the noon, to receive a

statement of affairs, to appoint inspectors and fix their remuneration, and for the ordering of the affairs of the estate generally.

Creditors are requested to file their claims with the assignee, with the proofs and particulars thereof required by the said Acts, on or before the day of such meeting.

And notice is further given, that after the day of , 189 , the assignee will proceed to distribute the assets of the debtor amongst the parties entitled thereto, having regard only to the claims of which notice shall then have been given, and that he will not be liable for the assets, or any part thereof, so distributed to any person or persons of whose claim he shall not then have had notice.

Assignee.

The following form of Contestation of Claim may be used :

And in the matter of the estate of

To

You are hereby notified, pursuant to the provisions of the above Act and under the authority and direction of the creditors and inspectors of this estate, that I dispute your right to rank on the estate of the above named insolvent for $, the amount of your claim filed with me, or for any part thereof.

And you are hereby further notified that unless within thirty days after the receipt by you of this notice, or within such further time as may be allowed on application to the proper Judge in that behalf, an action is brought against me to establish said claim and within the same time a copy of the writ or process is served upon me or my solicitor herein named, your claim to rank upon the estate shall be forever barred.

And you are hereby further notified that service of any

writ or process to enforce said claim may be made upon my solicitor, A. B., of, etc.

Dated at the day of

Assignee.

Who may be the Assignee.—No person other than a permanent and bona fide resident of the Province, shall have power to act as an assignee under an assignment, within the provisions of the Act: nor shall any such assignee have power to appoint a deputy or to delegate his duties to any person who is not a permanent resident of the Province. The property and assets of any such estate shall not be removed out of the province without the order of the County Judge of the county in which the assignment is registered, and the proceeds of the sale and all moneys received on the account of any estate shall be deposited by the assignee in one of the incorporated banks within the Province, and shall not be withdrawn or removed without the order of the judge, except for the payment of dividends and other charges incidental to the winding up of the estate. Any assignee, or other person acting in his stead, who violates the provisions of this section shall be liable to a fine of $500. One-half of the said fine shall go to the person suing therefor, the other half shall belong to the estate of the assignor.

Removal of an Assignee.—The majority in number and value of the creditors who have proved claims of $100 or upwards may, at their discretion, substitute for the sheriff or for the assignee under an assignment, a person residing in the county in which the debtor resided or carried on his business at the time of the assignment. An assignee may also be removed and another substituted, or an additional assignee may be appointed by the Judge of the High Court of the county where the assignment is registered. Where a new assignee is appointed the estate shall therewith vest in him without a conveyance or transfer. The new assignee may register a new affidavit of his appointment, in the office in which the original assignment was filed. The

registration of the affidavit shall have the same effect as the registration of a conveyance. The same person cannot act as assignee and solicitor of the estate, and if the assignee has interests diverse to those of the creditors, a new assignee will be appointed.

Any person to whom any gift, conveyance, assignment, transfer, delivery or payment has been made shall have sold or disposed of the property, the proceeds realized therefrom may be seized and recovered as fully and effectually as if the property still remaining in the control of such person could have been seized or recovered. When there has been no assignment for the benefit of the creditors, and the proceeds realized as aforesaid, are of a character to be seizable under execution, they may be seized under the execution of any creditor and shall be distributed among the creditors.

An assignment for the general benefit of the creditors shall take precedence over all attachments, all judgments and all executions not completely executed by payment, subject to the lien of the execution creditor for his costs.

Assignee's Remuneration.—The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose, after the first dividend issued has been prepared, or by the inspector, in case of the creditors failing to provide therefore subject to the review of the county court, or the Judge thereof. In case the remuneration of the assignee has not been fixed under the previous sub-section before the final dividends, the assignee may insert in the final dividend sheet and retain as his remuneration a sum not exceeding 5% of the cash receipts. No assignee shall make any payment or allowance to the inspector beyond the necessary travelling expenses, except under the authority of a resolution of the creditors passed at a regular meeting, affixing the amount thereof. No inspector shall be allowed more than $4 a day, besides actual travelling expenses but he may be allowed less.

It is the duty of an assignee to at all times have his accounts ready, to afford all reasonable facilities for their inspection and examination and to give full information when required, and if the creditor lives at a distance he should give this information by letter and should also, at the creditor's expense, furnish copies of any accounts that may be asked for.

How Creditors May Vote.—At any meeting of creditors, the creditors may vote in person or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim stating the amount and nature of it. This affidavit may be made before any judge, justice of the peace or notary public.

The votes of creditors shall be calculated as follows;

For every claim of over

$100	and not exceeding	$	200—1 vote.
200	"	"	500—2 votes.
500	"	"	1,000—3 votes.

Every additional $1,000, or fraction thereof, 1 vote.

In case of a tie, the assignee appointed by the creditors, or if none has been appointed, the judge shall have a casting vote.

Priority of Claims.—As soon as a person is declared insolvent, the first thing to be paid is taxes; second, rent: third, chattel mortgages; fourth, wages and salaries; fifth, the claims of the creditors.

As to the priority of creditors to the effects of a partnership firm, the partnership creditors come first for all partnership effects and individual creditors for all individual property; after this, the remainder is ratably divided.

Rent.—The preferential claim for rent is restricted to the arrears of rent due during the period of one year previous to the assignment and for three months following

the execution of such assignment and as much longer as the assignee shall retain possession of the premises. The landlord's right to preferential payment depends upon the existence of distrainable effects. If there is nothing upon which a distress can be levied, the landlord ranks only as an ordinary creditor.

Wages.—Preference is given to wage earners for three months' back wages; in excess of that, they have to take the same percentage as other creditors.

PREFERENCES.

Fraudulent Preferences.—A preference of any kind over the other creditors of an insolvent debtor, given within sixty days previous to the time he makes an assignment, the creditors can set aside the transaction as an unjust preference, whether the same be made voluntarily or under pressure.

The Act respecting assignments and preferences provides that any person being at any time in insolvent circumstances or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily, or by collusion with the creditor or creditors, gives a confession of judgment to defeat or delay his creditors wholly or in part, or with intent to give one or more of the creditors a preference over the others, such confession shall be deemed null and void, as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution

Nor can a person in insolvent circumstances convey, assign, or transfer any goods, chattels or effects, or bills, bonds, notes or securities, or shares, dividends, premiums or bonuses, in any bank, company or corporation, or any other property, real or personal, with intent to defeat, hinder, delay or prejudice his creditors shall, as against these creditors, be utterly void.*

*In case a payment has been made which is void under the act, and any valuable security given up, the creditor shall be entitled to have the security restored or its value made good to him.

A chattel mortgage given within sixty days of insolvency, is considered a fraudulent preference and is therefore rendered null and void.

Fines.—In addition to the civil right of attack upon fraudulent preference given by this section, the aid of the criminal law may be invoked by defrauded creditors. The Criminal Law provides that everyone is guilty of an indictable offence and liable to a fine of $800 and to one years imprisonment, who with intent to defraud his creditors (1st) makes or causes to be made any gift, conveyance, assignment, sale, transfer or delivery of his property, (2nd) removes, conceals or disposes of any of his property with the intent that anyone shall so defraud his creditors; further, everyone is guilty of an indictable offence and liable to ten years imprisonment, who with intent to defraud his creditors, or any of them, destroys. alters, mutilates falsifies any of his books, papers, writings or secureties or makes or is party to making any false or fraudulent entries in any book of account or any other document.

Creditors Proof of Claim.—Every creditor who holds security for his claim shall be required to value it. If it is in the form of negotiable paper, which is not due, the present worth of the paper will represent his claim.

A creditor should, immediately upon receiving notice of the assignment, furnish satisfactorily proofs of his claim. If he fails to do so within a reasonable time, he may be barred from ranking as a creditor.

Payments of Dividends.—As soon as a dividend sheet is prepared, notice shall be sent to the creditors showing all moneys received and disbursed, with balance on hand; and after the expiration of eight days after the mailing of such notice, dividends on all claims not objected to within that period shall be paid. As large a dividend as can with safety be paid shall be paid within twelve months from date of assignment and earlier if required by the inspectors, and

thereafter a further dividend shall be paid every six months and more frequently if required by the inspectors until the estate is wound up and disposed of.

In the absence of special difficulties the estate should be wound up within a year.

Undeclared dividends may be attached for debt.

When the dividends do not pay the claim in full, the creditor may sue the debtor for the balance.

Examination of the Assignor.—The creditors upon a majority vote of those present at any regular meeting, may without an order, upon a 48 hour notice, examine the assignor upon oath before any officer or clerk of the Crown, touching the estate and effects of the assignor, and as to the property and means at the date of his assignment, and also the property and means he still has of discharging his debts and liabilities; and as to the disposal of any property since contracting such debts, and as to any and what debts are due him.

In case he does not attend or refuses to answer or disclose his property or his transactions respecting the same, or if it appears from such examination that such assignor has concealed or made away with his property in order to defeat or defraud his creditors, the Court or Judge may order him to be committed to the common jail of the county for a term not exceeding twelve months.

He may be compelled to produce any book or books or documents of any kind relating to his property or dealings, in default of which he is liable to the same penalty.

Composition Agreements.—An insolvent may with the consent of his creditors, make a composition deed with them at a percentage upon the dollar and get a release of the balance of the claims, or an extension of time for payment.

In arranging a composition the most important point to be borne in mind is that all creditors must be dealt with on

an equality and that any advantage or bonus to any creditor to induce him to assent to the agreement will make it void.

This doctrine is very far-reaching. Any promise made by the debtor or any person on his behalf to pay a creditor more than each of the others cannot be enforced, and not to disclose is to conceal.

Assignment of an Insolvent to save the property from his creditors may be set aside by an action brought for that purpose. It is valid as between the parties themselves, but not as to creditors.

REVIEW QUESTIONS.

Insolvency.

1—Define insolvency?
2—When is a man said to be insolvent?
3—What is meant by being in insolvent circumstances?
4—Are there any insolvent laws?
5—What parliament has power to make insolvent laws?
6—What act governs at present?

Assignments.

7—What is an assignment?
8—What are the parties to an assignment called?
9—To what extent must an assignment be advertised?
10—Is an assignment voluntary or compulsory?
11—When and where should an assignment be registered?
12—What is the penalty for neglect to register?
13—Does neglect to register invalidate the assignment?
14—Is a sheriff liable for the penalty? Explain.
15—What may be done in case the assignment is not registered?
16—If an assigning debtor owns lands, what precaution is necessary?
17—What should be the form of an assignment?

The Assignee.

18—What are the duties of an assignee?

19—Who may be an assignee?

20—Under what circumstances may the property of assignment be removed from the county in which the assignment is made?

21—What must be done with all moneys and proceeds of sales of inscivent estate?

22—What is the fine for violation of the act regarding the above?

23—How may an assignee be removed?

24—How shall the estate vest in the new assignee?

25—Can a person act both as assignee and solicitor of an estate?

26—If a person to whom a gift or conveyance has been made on the eve of insolvency and the property has been sold to a third party, what may be done?

27—What precedence has an assignment?

28—What remuneration should the assignee receive?

29—What power has the assignee to pay the inspectors for services or expenses?

30—What is the most an inspector can be paid?

31—What are the duties of an assignee in respect to his accounts and the information of creditors.

The Creditor's Rights.

32—What must the creditor do upon receiving notice of the assignment?

33—How are creditors entitled to vote who are not present?

34—Upon what schedule are votes calculated?

35—What claims are prior to that of the creditors?

36—What is the time limit within which a transfer may be made before insolvency?

37—What are the clauses of the act relating to preferences?

38—How may you deal with a chattel mortgage given by the assignor within sixty days prior to his assignment?

39—What are the fines and punishment for making a fraudulent preference?

40—How and when shall dividends be paid?

41—What examinations may the assignor be required to stand?

42—What is a composition and its most important point?

RECOVERY OF DEBTS.

In Ontario all proceedings for the recovery of debts can with great facility be conducted. In all cases in the High Court and County Court, actions can be commenced and carried on there, and execution can thereupon issue to any Sheriff in the Province. There are three courts having jurisdiction in such cases, the High Court, the County Court and the Division Court. The jurisdiction of the Division Court is limited to cases where the debt is not over $100, except where it is ascertained by the signature of the defendant, as in the case of an accepted draft or a promissory note, in which case the jurisdiction would be increased to $200; the jurisdiction of the County Court is similarly limited to $200 and $400, and actions for larger demands must be brought in the High Court. It will be found much more satisfactory to take proceedings in the High Court where that can be done, as in that case the plaintiff is enabled to recover from his debtor the amount of his solicitor's charges as well as the mere disbursements. In the Division Court the jurisdiction is to some extent limited to the residence of the defendant, but if the claim be over $100 and payable by the contract of the parties at a particular place, action may be brought in the court holden for the Division in which the place of payment is situated, and the defendant cannot then have it removed to his place of residence or to any other Court without giving notice of his intention to object to the jurisdiction, and shewing a bona fide defence to the action, within eight

days. It should be noted that in case an assignee disputes a creditor's claim to be entitled to recover on an estate, the action for a declaration of the right to rank must be brought in the High Court, as it is an action for equitable relief.

In very few cases where the claim is a mere money demand is it found necessary to go down to trial, provided the writ of summons issued be properly endorsed, as the practice gives great facility for obtaining speedy judgment in case of dispute, on serving notice of a motion for that purpose and proving the claim by affidavits; and in case the defendant files an affidavit contradicting that of the plaintiff, the motion may be enlarged for the purpose of cross-examining him upon his affidavit, and the plaintiff may then subsequently move for judgment upon the admissions obtained on such cross-examination.

When judgment is obtained, it may be enforced by issuing execution against the goods and lands of the judgment debtor, and, if thought advisable, the creditor may examine the judgment debtor upon oath as to the means which he had at the time of contracting the debt, as to his subsequent disposition of them, and as to what means he now has to enable him to pay the same. Since the recent Statute relating to executions, by which it is provided that they shall remain in force for three years without the expense of renewing them, it is often satisfactory, in view of the small expense of obtaining judgment, to take judgment for the purpose of issuing the execution, and keep it in the Sheriff's hands, so that in case it is at any subsequent time discovered that the defendant is possessed of property which might not have been known to the judgment creditor at the time he obtained his judgment, it may be seized without delay. It often happens that within a few years after a judgment has been obtained the judgment debtor will be found to have gone into business, thinking that his

creditors have abandoned all intention of proceeding further against him, and the creditor who then has an execution can collect his debt.

In case the creditor's claim amounts to $100 or more, and the debtor can be shewn to be about to leave the Province with intent to defraud his creditors, he may be arrested as an absconding debtor.

APPROPRIATION OF PAYMENTS.

Definition.—Appropriation of payments is defined as the application by a debtor or creditor to one of several debts of a sum of money paid by the debtor on account of his indebtedness.

The general rule of law is that the party who pays money has a right to apply that payment as he thinks fit.

A debtor may owe a creditor various sums of money for debts contracted at different dates and which may be represented either by mortgage, bond, bill of exchange or open debt.

The debtor has the right in making a payment to direct that the payment he makes shall be applied in payment or in part payment, as the case may be, of any of such debts, and his direction or application of the payment prevents the creditor from applying it on any debt other than the one specified by the debtor.

This direction or application must be made either before or at the time of payment and may be either oral or in writing, as by letter enclosing the payment.

If the debtor does not specify the debt on which he wishes the payment to be credited, the creditor may then exercise his right of applying the payment as he desires to any of the different debts owing to him. The creditor's

right may be exercised by him at any time, but once having credited it to a certain debt and the debtor having been notified of such credit having been made, the creditor cannot afterwards apply it to a different account.

The creditor may exercise his right in applying the payment to a debt that has been barred by the Statute of Limitation.

In case neither the debtor or creditor apply the payment to a particular debt the law will apply the payment to the discharge of the debt of earliest date standing unpaid at the date of the payment.

SALE OF PERSONAL PROPERTY.

Property is the produce of labor; it is anything of value which is susceptible of ownership. The word property, however, is used in two different senses; to indicate

1st. The thing itself which the person owns, and

2nd. The right or interest which a person has in a thing to the exclusion of others; as for example, a farm is said to be property, and the right one has in the farm is said to be his property in it. The latter is the legal technical definition of the term, while the former is the popular understanding of it. Property is divided into two general classes, *personal* and *real.*

Personal property.—To give a perfectly logical definition of personal property so as to exactly distinguish between it and real property seems to be difficult. Personal property is generally said to consist of such things as are movable from place to place, as merchandise, live stock, furniture, etc., whereas real property consists of those things that are fixed and immovable, such as lands, houses, etc. Houses, however, are frequently movable, but are nevertheless generally real property. A house may be built merely as a temporary building with the intention of moving it, or any house may be sold by itself and taken off the land on which it is built. In either of these cases it is personal property. Under the common law all vegetable growths such as trees, grass and growing crops while attached to the soil were considered real property, but the moment they are severed from the soil they become personal pro-

perty. Crops growing from seed sown or planted may be bought and sold or mortgaged as personal property.

Sales.—A sale of personal property may be regarded in two ways :

1st. It may be defined as the transfer of the title in the thing sold for a price in money ; or

2nd. It may be considered as a contract or agreement for the transfer of the title to the thing sold for a price in money. The latter is the sense in which the term will be used in this book. The consideration on which the agreement is made must be money, since if it is something else than money the transfer is a barter and not a sale. Sales are divided into two general classes, executory and executed.

Executory Sales are those in which the title to the property has not been transferred from the seller to the buyer ; there is simply an agreement to make a transfer of it at some future time. It is because of the importance of this division into executory and executed sales that we define a sale as an agreement to transfer the title rather than the transfer itself. If a sale is the transfer of the title, then there can be no such thing as an executory sale.

Executory sales are usually conditional. Of these we might mention,

1—Sales on trial.

2—Sales by sample or description.

3—Sales of goods in transit.

In a conditional sale the title of the property does not pass to the purchaser until the conditions are fulfilled.

Executed Sales.—In executed sales there must be a delivery of the property to the purchaser which may be

1—An Actual Delivery, where the property is portable and can be easily handled.

2—A Constructive Delivery, where the article cannot be handled and something is handed to the purchaser that takes the place of the goods. The following are examples:

1—A Bill of Lading to represent goods in the hands of a railway or shipping company.

2—A Warehouse Receipt representing goods stored.

3—The Key of the storehouse where the goods are kept.

In case of delivery by bill of lading or warehouse receipt an assignment should be endorsed on it.

Necessary Conditions.—The necessary conditions or elements of a sale of personal property are as follows:

1st. There must be parties competent to contract.

2nd. These parties must mutually assent to the contract in the same sense.

3rd. There must be a consideration or price.

4th There must be subject matter or thing sold.

5th. The sale must conform to the statute of frauds.

Parties.—The parties to a contract of sale are the buyer and the seller, or as they are frequently called, the vendor and the vendee. These parties must be competent to make a binding contract. The rule as to the competency of parties is the same in sales of personal property as in any other contract.

Mutual Assent.—This condition is the same as the corresponding condition in an ordinary contract. The parties must assent to the terms of the sale with the same understanding of them. This assent may, of course, be given orally or in writing, and may be either express or implied. In order to make a contract of sale, however, there must be a definite offer to sell on the part of one party, and a definite acceptance of the offer on the part of another. Mere negotiations which do not constitute a distinct offer and acceptance will not be considered a sale.

Price and Payment.—Corresponds to the consideration in an ordinary contract, and differs from it only in that it must be money. It may either be paid at the time of the sale or promised to be paid at some future time. The price may be either express or implied. If the parties distinctly agree upon the amount to be paid, there is an express price. Very frequently, however, it happens that no price is fixed upon at the time of the sale and no express promise to pay is mentioned. Where this is the case, if there is anything from which the price intended can be determined, the law will imply a promise to pay it; for example where the subject matter of the sale consists of articles of merchandise, the law will imply the price to be the reasonable market value of the articles on the day of sale. If there is nothing from which the price intended can be determined there will be no sale.

Selling Personal Property, which is still retained in possession, is binding as between the parties themselves, but is not binding against creditors or subsequent purchasers, unless a Bill of Sale is recorded.

Subject Matter.—The thing sold, or the subject matter must be legal and in actual or potential existence at the time of sale. There cannot be a valid contract of sale where the subject matter has ceased to exist, either at the time the contract is made or at the time when it is to be executed. If a horse sold be dead, or merchandise sold be destroyed by fire or otherwise when the contract is made, or when it is to be executed, there is no sale, even though the price be paid. But where a thing is in potential existence, that is, may come into existence in the future, as, for example, the wool to grow on a flock of sheep, or a growing crop, a sale may be made of it.

Legality.—The subject matter of the contract must be legal in order to make a binding contract of sale. The legality of the subject matter depends on the same rules

here as in any other contract; it is legal unless the law declares it to be illegal, and a sale is always presumed to be legal until its illegality is shown. At common law the sale of articles having an immoral effect, or to be used for an immoral purpose, such as obscene publications, gambling etc. are illegal.

Effect of Illegality.—An illegal sale is absolutely void, hence there can be no ratification of it. If a sale is made of several articles for one price, and part of them legal and the others illegal, the whole contract is tainted with illegality, and no money can be recovered for any of the articles. If an illegal sale has been executed by either or both parties, the law will not relieve either party from its effect. If the subject matter of the sale has been delivered, the seller may refuse to deliver. This is because of the general rule that in all illegal transactions the law leaves the parties just where it finds them.

Statute of Frauds.—Without a statutory provision to that effect a contract of sale of personal property need not be in writing, in order to be valid; but, as we have seen, the Statute of Frauds provides that no contract for the sale of goods, wares or merchandise for the price of $40 or upwards is binding, unless

1st. The buyer shall accept part of the goods so sold and actually receive the same, or

2nd. Pay part of the price at the time the agreement is made, or

3rd. The agreement be made in writing and signed by the parties to be charged. Wherever this statute has been adopted a sale of personal property amounting to more than $40, which does not conform to one of these conditions, is not binding.

While this is sufficient to comply with the statute, in important sales it is customary to execute a formal bill of sale

like the following, in order that the buyer may have something to show his title to the property, and also require that the seller give a written guarantee that he has a good title.

BILL OF SALE.

Know all Men by these Presents: That I, HENRY STULL, of the city of Ottawa and County of Carleton, Province of Ontario, party of the first part, in consideration of the sum of One Hundred Dollars to me in hand paid by THOS. BOWS, of the city of Ottawa and County of Carleton, party of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents grant and convey unto the said party of the second part, all of the following described personal property, to wit :

(*Then follows a list of the articles of property.*)

To Have and to Hold the same unto the said party of the second part and his legal representatives forever.

The said party of the first part hereby covenants and agrees to and with the said party of the second part that he is possessed of the full right and title to the party hereby conveyed and that he will warrant and defend the same in the quiet and peaceful possession of the said party of the second part against the lawful claims of all persons whomsoever.

In Witness Whereof, I have hereunto set my hand this first day of July, A. D. 1897.

HENRY STULL.

STOPPAGE IN TRANSIT.

Goods or any Personal Property May be Stopped in Transit by the seller before there has been a delivery to the buyer. It is the right to regain possession of goods that have been forwarded to the buyer on credit, and then to hold possession of them until the right has been paid.

The right may be exercised by the seller provided the following conditions exist:

1st. The price for which the goods were sold must be wholly or partly unpaid.

2nd. They may be in the hands of a third person in transit.

3rd. The buyer must be insolvent.

Indebtedness.—The sole use of the right of stoppage in transit is to enforce payment, consequently payment for goods necessarily prevents its exercise; but the mere taking of a note in payment does not affect the right, unless, by agreement between the parties, the note is accepted as absolute payment. Although the price may be partially paid, the goods may be stopped in protection of the part which remains unpaid. The indebtedness must be on the particular goods which are stopped. Any general indebtedness of the seller to the buyer will not allow the stoppage of goods which are paid for.

In Transit.—The second condition is that the goods must be in transit from the seller to the buyer. This of course implies that they have left the possession of the seller and have not yet come into the possession of the buyer, so they are necessarily in the possession of a third person for the purpose of being transported to the buyer.

Insolvency of the Buyer.—This must have occurred or the seller have discovered it after the sale. If the insolvency occurred and is known to the seller before he ships the goods he cannot exercise the right of stoppage in transit.

Exercise of the Right.—It is not necessary for the seller to take actual possession of the thing sold when in the hands of a carrier or middleman. It is sufficient for him to give notice to the common carrier to hold the goods subject to his order. The notice should describe the goods, state that the right of stoppage in transit exists, and order the carrier not to deliver them to the consignee.

NOTICE OF STOPPAGE IN TRANSIT.

LONDON, Ont., July 10, 1897.

To the Canadian Express Company, London, Ont. :

Gentlemen,—I delivered to you yesterday one case of goods consigned to David Blain & Co., Collingwood, Ont. Circumstances are such that I have the right of stoppage in transit. Do not, therefore, deliver the case of goods, but hold the same subject to my order.

Yours respectfully,

J. C. WOODS.

He may send this by mail, but in that case he may have to prove that it was actually received, and he would find it difficult to do so, consequently it is best to have it delivered personally to the express agent. If the company delivers the case of goods after receiving this notice it is liable for whatever loss the shipper may sustain by such un authorized delivery.

REVIEW QUESTIONS.

SALES OF PERSONAL PROPERTY.

1—Define property ; in what sense is the word used?

2—Define personal property. What does it include ?

3—What is a sale of personal property ?

4—What is an executory sale? Executed? Give examples.

5—What are the necessary conditions of a sale of personal property ?

6—What is said of the parties ? Assent ? Price ? Subject matter? Legality of subject matter ? Illegality ?

7—What connection has the statute of frauds with sales of personal property ? Give example of its application ?

8—What is the right of stoppage in transit ?

9—Under what circumstances may it be exercised ?

10—What is necessary in regard to the indebtedness of the buyer ? With regard to the goods being in transit ? Insolvency of the buyer ?

11—How is the right exercised ?

CHATTEL MORTGAGES.

A Chattel Mortgage is a lien on personal property. It is, in reality, a deed or conveyance of personal property as security for a debt, or for money borrowed. It must be registered at the County Clerk's office within five days after execution. It may be written by any person, but must be signed and witnessed and sworn to before a commissioner of the High Court or a notary public or magistrate.

It must contain a full description of the goods and chattels, so they can be readily distinguished ; also where they are located and whose possession they are in at the time.

Besides the affidavit of the witness, it must also contain an affidavit of the mortgagee, or his duly authorized agent, that the mortgagor is justly indebted to him for that much money due, or for that much money paid, and that it was not done to protect the goods of the mortgagor from his creditors.

This instrument, in order to hold the goods against other creditors or subsequent purchasers in good faith, must be registered within five days.

If a mortgage be taken merely as security for a debt previously contracted, it will not be binding against other creditors.

If money is paid it will hold against other creditors, unless done on the eve of bankruptcy, when it would be set aside. Action must be taken within sixty days after date of mortgage.

If all or a portion of the goods covered by a chattel mortgage should be removed to another county, a certified copy of the mortgage must be filed with the County Court Clerk where they are removed to within sixty days, otherwise the goods are liable to seizure and sale under execution, and in such case the mortgagee has no recourse against subsequent purchasers and mortgagees for value.

A chattel mortgage holds the claim against the debtor for twenty years, because it is an instrument under seal.

It will hold the goods against other creditors for only one year, unless it is renewed within the year. To hold the goods against other creditors for a longer period than one year it must be renewed within thirty days before the year expires, and so on from year to year as long as it runs. For this reason most chattel mortgages are drawn for eleven months instead of one year.

Caution to Debtor.—All chattel mortgages have not the same wording in the printed blanks commonly used, and the debtor should be certain that the instrument he signs does not give the creditor the right to foreclose the mortgage at any time he pleases upon some fancied breach of the covenant.

For an illegal seizure damages may be recovered, but the wording of some of the mortgages gives the creditor the right to seize before the debt is due, and to do so without giving any notice to that effect.

Assignment.—A chattel mortgage is not a negotiable instrument, but it may be transferred by assignment. The assignment must be filed also at the County Clerk's Office where the mortgage is registered.

Discharge.—When a chattel mortgage has been paid a discharge should be filed also at the office of the County Clerk. It is a document describing the chattel mortgage and stating that the debt has been paid. Many persons

think that if they have returned to them the copy that the mortgagee held it is sufficient, entirely forgetting that the duplicate is still on file at the Clerk's office. The discharge should be there also, showing to the public that the debt has been paid.

FORM OF CHATTEL MORTGAGE.

This Indenture, made (in duplicate) this 1st day of July, 1897, between David A. Keand, of the City of Chatham, the Mortgagor, and John Huston, of the City of London, the Mortgagee;

Witnesseth, that the mortgagor in consideration of one hundred dollars of lawful money of Canada, to him paid by the said mortgagee, at or before the delivery hereof (the receipt whereof is hereby acknowledged), doth hereby grant, bargain, sell and assign to the said mortgagee, his executors, administrators and assigns, all and singular the following goods and chattels, being one bay mare, 4 years old, one waggon, one set of double harness, and all my household furniture of every description in my house on Nelson Street, in said city of Chatham; TO HAVE AND TO HOLD the said goods and chattels unto the said mortgagee, his executors, administrators and assigns to be his and their only use forever; Provided always that if the mortgagor, his executors or administrators shall pay or cause to be paid to the said mortgagee, his executors, administrators or assigns one hundred dollars in one year from the date hereof, with interest thereon at eight per cent per annum, then these presents and everything herein contained shall become cease, determine and become utterly void to every intent and purpose. And the said mortgagor for himself, his executors and administrators, shall and will warrant and forever defend by these presents the said goods and chattels unto the said mortgagee, his executors, administrators and assigns.

And the said mortgagor doth hereby for himself, his executors and administrators, covenant with the said mortgagee, his executors, administrators and assigns, that he or they will pay the money hereby secured in the manner above stated, and also that in case default shall be made in payment as aforesaid or any part thereof, or in case the mortgagor shall attempt to sell any part of the said goods or chattels, or to remove the same out of the County of Kent, or suffer the same to be seized or taken in execution, then it may be lawful for the said mortgagee, his executors, administrators and assigns, his or their servants or agents, at any time during the day, to enter into any lands or houses where the said goods may be, and for such person to break or force open any doors, bolts or fastenings, fences or enclosures, for the purpose of taking possession of and removing said goods, and may thereafter sell all or any part thereof at public auction or private sale, and out of the proceeds of such sale to pay such sums of money as may be due him hereunder, and all lawful expenses incurred thereby in consequence of such default as above mentioned, and to pay over to said mortgagee any surplus remaining after such sale and payment; or in case of deficiency, then that the said mortgagor, his executors or administrators will pay the same to the said mortgagee, his executors, administrators or assigns. Provided always that it shall not be incumbent to make such sale as aforesaid, but the said mortgagee his executors, administrators or assigns, may peaceably hold, use and possess said goods and chattels without the hindrance of any person whomsoever.

In Witness Whereof, the parties hereto have hereunto placed their hands and seals.

WITNESS; D. F. KEAND, [SEAL.]

FRED. LINDER.

REAL ESTATE MORTGAGES.

A Mortgage on real estate is a deed or conveyance of the property by the debtor to the creditor to secure the payment of a certain sum of money, with a "proviso" that it shall become void upon the payment of the debt and accumulated interest. A mortgage is binding on the property as soon as it is executed, but the first mortgage registered is the one that has first claim. Of three mortgages that might be given on the same property the same week or day, the first one that is recorded is first mortgage, no difference whether it was written first or last.

A Precaution.—Before paying over the money there should be an abstract of title procured; then sign and register the mortgage and have the abstract continued so as to include the mortgage, thus making certain that nothing has been entered in the meantime. At the same time this is being done the Sheriff's office should be searched to see if there are any judgments, and the Treasurer's office to see if taxes are all paid. With these precautions a safe title would be secured.

There are various clauses in a mortgage that should be noticed. One provides that if interest is not paid it may be compounded; another that if taxes are not paid the lender may pay them and charge the same rate of interest that the mortgage draws; another one provides that if the borrower does not keep the buildings insured for a certain specified sum the lender may insure them and charge the same rate of interest the mortgage draws.

Transfer.—Mortgages are not negotiable by indorsement, but may be transferred by assignment. The assignment is also an instrument under seal, and must be recorded at the same place the mortgage is registered.

Foreclosure is where the debtor fails to meet the payments and the lender has to take possession and sell to satisfy the claim.

Discharge of Mortgage.—When a mortgage has been paid the lender is required to give the borrower a discharge, which is a statutory form of receipt. When this has been filled out and signed in the presence of a witness, duly sworn, it is registered by the debtor or borrower.

Unsatisfied Mortgages.—If a mortgage for a certain amount covers certain properties of a debtor which, upon being sold, do not pay the whole claim of principal, interest and expenses, and the debtor has other property, the mortgagee can recover on the other property until his full claim has been satisfied. If the debtor has no other property then, but may acquire it afterwards, the mortgagee may proceed against it at any time within twenty years after the maturity of the mortgage.

Prepayment.—Mortgages may be prepaid five years from date, no matter for what length of time they may have been drawn, by simply paying three months advance interest. The mortgagee cannot collect any interest thereafter

Mortgages on real estate outlaw in ten years after maturity or last payment of either principal or interest, unless re-acknowledged.

FORM OF MORTGAGE.

This Indenture made in duplicate, the eighth day of October, one thousand eight hundred and ninety in pursuance of the Act respecting short forms of Mortgages,

BETWEEN, Christopher Columbus, of the Town of Penetanguishene in the Province of Ontario, Lumberman, an

unmarried man, hereinafter called "The Mortgagor," of the First part, and William Dalton of the City of Toronto in the Province of Ontario, Banker, William Henry Price, of the City of Hamilton in the said Province of Ontario, Esquire, and Ebenezer Mills of the City of Woodstock in the said Province of Ontario, Banker, hereinafter called "The Mortgagees," of the Second Part;

Whereas the party of the first part has contracted to purchase from the parties of the second part the land hereinafter described, and has agreed to give this mortgage as security for two hundred and fifty dollars, the unpaid balance of the purchase money.

Now this Indenture Witnesseth, that in consideration of two hundred and fifty dollars, the unpaid balance of the purchase money, and of one dollar of lawful money of Canada now paid by the said mortgagees to the said mortgagor, the receipt whereof is hereby acknowledged, the said mortgagor doth grant and mortgage unto the said mortgagees, their heirs and assigns for ever as joint tenants, All and singular that certain parcel or tract of land and premises situate, lying and being in the Township of Tiny in the County of Simcoe in the said Province of Ontario, being composed of the west half of Lot Number One Hundred and Thirteen on the first concession in the said Township of Tiny, containing by admeasurment one hundred acres, be the same more or less.

To Have and To Hold the same with the appurtenances unto and to the use of the said mortgagees, their heirs and assigns forever as joint tenants subject to the proviso for redemption thereof hereinafter contained.

Provided this mortgage to be void on payment of two hundred and fifty dollars in gold with interest at six per cent as follows;—the principal sum to be repaid by two equal instalments, payable on the eighth day of October 1891

and the eighth day of October 1892, together with interest at the rate aforesaid payable with each instalment of principal as shall from time to time remain unpaid, and taxes, and performance of statute labor; The said mortgagor convenants with the said mortgagees that the mortgagor will pay the mortgage money, and interest, and observe the above Proviso; That the mortgagor hath a good title, in fee simple, to the said lands; and that he hath the right to convey the said lands to the said mortgagees; and that, on default, the mortgagees shall have quiet possession of the said lands, free from all incumbrances; and that the said mortgagor will execute such further assurances of the said lands as may be requisite.

Provided that the mortgagees on default of payment for one month may enter on the lease or sell the said lands without notice.

Provided that the mortgagees may distrain for arrears of interest.

Provided that, in default of the payment of any instalment of the principal or the interest hereby secured, the whole principal hereby secured remaining unpaid, shall become payable but the mortgagees may waive their right to call in the principal, and shall not therefore be debarred from asserting and exercising their right to call in the principal upon the happening of any future default; provided that, until default of payment, the mortgagor shall have quiet possession of said lands.

In Witness Whereof the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered, }
in the presence of }

Received, on the day of the date of the foregoing indenture, the mortgage money herein mentioned, to be advanced to me.

Witness,

County of Simcoe, To Wit. I, John Smith, of the Town of Penetanguishene, in the County of Simcoe, make oath and say;

1. That I was personally present and did see the within instrument and duplicate thereof duly signed, sealed and executed by Christopher Columbus, the party thereto.

2. That the said instrument and duplicate were executed at Penetanguishene.

3. That I know the said party.

4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me, at Penetanguishene, in the County of Simcoe, this twenty seventh day of October A. D. 1896.

A Commissioner for taking affidavits in H. C. J.

MASTER AND SERVANT.

The Relation between Master and Servant is in many respects the same as that between principal and agent, so that what has been said under the head of agency will in nearly every particular apply here.

The master is the employer and the servant the employee. In order to constitute a contract of hiring and service there must be either an expressed or implied mutual engagement binding one party to hire and remunerate and the other to serve for some determinate time. In cases where the employer only agrees to pay as long as the servant remains, leaving it optional either with the servant to serve or the master to employ, there is no contract of service and hire.

Contract of Service and Hire.—A contract of service and hire need not necessarily be in writing unless the contract is for a longer period than one year.

If no express contract has been made for hire between the parties a contract will be presumed if the service is performed, unless it is with near relatives, as with parent or or uncle.

If service has been performed without anything being said about wages the law presumes that the parties agreed for the customary wages for that kind of service paid in that community. Where it is not specially agreed to the contrary, wages would be payable at the end of the time.

Duties of the Employee.—The employee must fulfil the agreement, whatever that may be, and to do this faith-

fully requires not only diligence, but his careful attention, skill and forethought. His master pays for his skill as well as he does for his time, also his diligent forethought in planning or executing his work. He is expected to obey all reasonable orders from the master, to be punctual and courteous.

A flagrant violation of the agreement in any of these particulars renders him liable for damages or for discharge as the case may be,

Notice to Leave.—A servant hired for a definite period, either for a day, a week, a month, or a year may, on the termination of the time, leave, or the master may discharge him without giving any notice.

Where the hiring is for no definite time and the wages paid by the day, week, month, or year, when either party wishes t terminate the contract the other party is entitled to notice: If paid by the day, a day's notice. If paid by the week, a week's notice. If paid by the month, a month's notice. If paid by the year, three month's notice.

The notice need not be in writing, but where the time is longer than a day it would be much better to give a written notice.

Discharge Without Notice.—The employee is presumed to give due diligence to the discharge of the duties assigned to him, to be punctual as to time, to obey all reasonable commands, and to be responsible for all damages caused by his negligence. If, therefore, he violates the agreement by habitually neglecting his duties, by taking absences without permission, or in any of the following ways he may be discharged without notice by paying him the wages due.

Persons employed on a weekly or monthly service may quit or be discharged by giving a week's or a month's notice by payment of a week's or a month's wages.

Cause for Leaving.—The master's commands are presumed at time of contract to be reasonable, legal, and to be within the limit of work the servant was employed to perform. The implements and machinery are supposed to be suitable for that kind of work and so protected as to be reasonably free from danger. If, therefore, the master gives unreasonable commands and endeavors to enforce them, the servant has cause for leaving.

If the machine, or any particular machine used by the employee is not considered suitably protected, and he gives notice to the employer, who still requires work to be done with the dangerous machine, it is a cause for leaving.

If any accident occurs after giving of such notice the employer is liable for damages.

If the servant used the machine without giving any notice of its danger he cannot claim damages for an accident.

If the master does not pay the wages as per agreement the servant may procure a discharge and wages due, by placing the matter in the hands of a Justice of the Peace.

Proceedings in Case of Disagreement.—If any disagreement exists between master and servant, proceedings must be taken before a Justice of the Peace within one month after the engagement has ceased.

If the Justice receives the evidence of the plaintiff he must also receive that of the defendant.

When wages are not paid by the master to the servant, the servant may within one month after the engagement ceased, or within one month after the last instalment of wages was due, go before a Justice for a hearing of the case, and if furnishing a sufficient proof of the cause of his complaint, secure a discharge and obtain an order for payment of wages up to the amount of $40 and costs.

Either party may appeal from the Magistrate's decision to the Division Court by giving notice of appeal to the

other party within four days after the decision, and at least eight days before the holding of the Division Court; also, within the four days to enter into a bond with the opposite party with two sureties, approved by the Clerk of the Court, for $100, as a guarantee to appear and to cover the costs.

Where masters and workmen establish a Board for the settlement of their difficulties that may arise, it has by statute all the powers that arbitrators possess, and its decisions are binding. See Revised Statutes of Ontario, Chap. 140.

CONTRACT FOR HIRE OF LABOR OR SERVICE.

This Agreement made this day of 189, between the party of the first part and the party of the second part

Witnesseth, That the said party of the first part agrees faithfully and diligently to work for said the party of the second part, on his farm in the county of Province of Ontario, (or as clerk or salesman in his store) for the period of from and after the day of 18, for the sum of per month.

In consideration of which services so to be performed the said party of the second part, agrees to pay the said party of the first part, the sum of per month, payable as follows: dollars on the day of and dollars on the first day of each successive month following, until the whole labor shall be performed. And when said labor has been fully performed, then the balance of such as has not been therefore paid the said party of the first part.

In Witness thereof the said parties have hereunto set their hand this day of 18.

Signatures: {

HOTEL KEEPERS.

A Hotel Keeper is any one who makes it his business to entertain travelers, and provide lodgings and necessaries for them, their servants and horses, whether a sign swings before his door or not.

No matter what personal objection a host may have, he cannot refuse to receive a guest; for every one who professes to exercise the business of a hotel keeper is bound to afford such shelter and accommodations as he possesses to all travelers who may apply therefor, and tender or are able to pay the customary charges. However, a traveler who behaves in a disorderly or improper manner may be refused; so may one who is intoxicated or if there is no room in the hotel; but it will not do for the proprietor to say he has no room if the statement is false, for he will thus render himself liable to an action.

A Hotel Keeper must not knowingly allow thieves, or reputed thieves to meet in his house, no matter however lawful the object of their meeting may be; and if he wishes he may prohibit the entry of one whose misconduct or filthy condition would subject his guests to annoyance.

Hotel Keeper's care of goods and baggage.—The hotel keeper is bound to take not ordinary care merely, but uncommon care of the goods, money and baggage of his guests, and he is also responsible for the acts of his domestics and servants, as well as for the acts of his guests. He cannot avoid his responsibility by a refusal to take any care of goods because there are suspected persons in the house, the law will not allow him thus to escape his liability. The doctrine in reference to the liability of a hotel keeper for the safety of his guest's goods, baggage, etc., is very broad. He may be exonerated when the guest chooses to have his goods under his own care, but in order to render him liable

it is not necessary that the goods be placed in his special keeping, or brought to his special notice. If they are in the hotel, brought there in an ordinary and reasonable way by a guest, it is sufficient to charge the proprietor. And it does not matter in what part of the hotel the goods are kept, while they are within it they are under the care of the hotel keeper, and he is responsible for their safe custody.

Who is a Guest.—"Long since it was laid down in old Bacon that hotels are for passengers and wayfaring men, so that a friend or a neighbor can have no action as a guest against the landlord." Such a neighbor or friend who is no traveler, but comes to the hotel at the request of the landlord, and lodges there is not deemed a guest. "But when a traveler (a traveler is one who is absent from home on pleasure or business), comes to a hotel and is accepted, he instantly becomes a guest."

If a traveler leaves his horse at a hotel, and lodges elsewhere, he will be deemed a guest. But if a traveler leaves his goods, for which the hotel keeper receives no reward, and then lodges elsewhere, he will not be deemed a guest.

The length of time that a man may stop at a hotel makes no difference, whether for one meal or one month, if he still retains his character, a special agreement as to the price of board per week will not change his character from a guest to that of a mere boarder.

The hotel keeper has a lien upon the goods of his guest for his board and lodging and liquors supplied him. The goods having been borrowed by the guest, and owned by a third person, will make no difference, unless the fact is known to the hotel keeper.

If the horses of travelers be left with the hotel keeper, in his hotel, he has a lien upon them for their keep, even though the owner put up at a different place. But a hotel keeper has no lien upon a horse for the bill of its owner, or the bill for the keeping of another horse.

LIENS ON PROPERTY.

A Lien is a legal claim. It includes every case in which either real or personal property is charged with any debt or duty. Or in other words, it is the right to hold possession of property until some claim against it has been satisfied.

Possession is always necessary to create a lien except in case of real estate. The lien simply extends to the right of holding the property until the debt is satisfied.

The existence of a lien does not prevent the party entitled to it from collecting the debt or claim by taking it into Court.

Warehouse men, carpenters, tailors, ·s, millers, printers, etc.. or any person who performs labor or advances money on property or goods of another has a lien on same until all charges are paid.

Hotel Keepers have a lien upon the baggage of their guests, whom they have accommodated.

Common Carriers have a lien on goods carried for transportation charges.

Agents have a lien on goods of their principal for money advanced.

How to Hold the Lien. Never give up possession of the property until the debt is paid.

Real Property. If the debt is on a house, barn or other real property, file a lien on the whole property, and have it recorded in the County Registry office. The claim then partakes of the nature of a mortgage.

Mechanic's Lien. Many of the Provinces have enacted special laws to protect mechanics who furnish materials for buildings which they erect for others. The lien must be registered within 30 days from the time the last work was done or material delivered and an action thereon must be commenced within 90 days from such time, otherwise the lien becomes extinct. The following form is the one generally used in Ontario :

FORM OF MECHANIC'S LIEN.

Thomas Burns, of the City of Hamilton, Bricklayer, claims a lien upon the estate of John Hunter, Hamilton, of said City of Hamilton, Contractor, in the undermentioned land in respect of 40 days' work performed thereon while in the employment of Peter Smith, of the City of Hamilton; Builder, on or before the 30th day of June, 1897. The amount claimed as due is for 40 days' wages at $3.50 per day—$140.

The following is a description of the land to be charged : Lot 81 and west half of Lot 82 on the west side of McNab Street North, according to Plan 672 filed in the Registry Office for the County of Wentworth.

Dated at Hamilton this 24th July, 1897.

Witness, THOMAS BURNS.
Adam Meyers.

AFFIDAVIT VERIFYING CLAIM.

I, Thomas Burns, named in the above claim, do make oath that the said claim is true. THOMAS BURNS.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 24th day of July, 1897.

J. E. O'Reilly.
A Commissioner.

THE PUBLIC HIGHWAYS.

Public Roads are those which are laid out and supported by Crown or Municipal Councils. Their care and control is regulated by the statutes of the different Provinces, and in detail will not be referred to here, as they can be easily looked up by those who desire information so entirely local.

Ownership. The soil and the land remains in the Crown.

Liability.—The repair of highways is usually imposed upon the Municipalities, and they are made liable by statute for all damages, against persons or estates, from injuries received or happening in consequence of a neglect of duty on the part of the officers having the same in charge.

The opening or closing of highways is effected by the by-law of a Municipal Council.

Law of the Road.—Persons traveling with carriages or vehicles of transportation, meeting on any public way, it is customary to turn their carriages or wagons to the right of the center of the road, so far as to permit such carriages or wagons to pass without interruption.

Runaways.—The owner of a runaway horse or horses, if negligent, or not exercising due care, is responsible for all damages that may occur.

Any unreasonable occupation of the public way, whether arising out of a refusal to turn out and allow a more rapid vehicle to pass, or from an unjustifiable occupancy of such a part of the road as to prevent others from passing, will render the party so trespassing liable for damages to any suffering injuries therefrom.

Petitions for laying out or changing a road or street are made to the Municipal Council.

ARBITRATION.

Arbitration is the submission of an agreement by parties who have a controversy or difference, to the decision of a third party.

Arbitration is one of the highest courts for the settlement of personal differences, and if people would only learn more of its benefits and advantages, more would avail themselves of it.

When the matters in difference are simply those of fact, it is often more satisfactory to submit them to the decision of mutual friends, each contending party choosing one, and the two arbitrators thus chosen choosing the third, and the three parties thus chosen constituting the court.

The decision of the arbitrators is called an award.

The award should be specific and distinct containing the decision of the arbitrators in as clear and concise language as possible, which should be put into writing and signed by them.

The following oath should be taken by the persons chosen to act as arbitrators or referees before entering upon the examination of the matters in dispute: We, the undersigned arbitrators, appointed by and between John Smith and Thomas Brown, do swear fairly and faithfully to hear and examine the matters in controversy between said John Smith and Thomas Brown, and to make a just award, according to the best of our understanding.

T. H. Grant,
L. L. Hamilton,
S. H. Thomas.

Sworn to, this 26th day of May 1897, before me.

D. B. Johnson,
Justice of the Peace.

Oath to be administered to a witness by the arbitrators : You do solemnly swear, that the evidence you shall give to the arbitrators here present in a certain controversy submitted to them by and between John Smith and Thomas Brown, shall be the truth, the whole truth, and nothing but the truth, so help you God.

The agreement to refer matters in dispute to the decision of arbitrators is called a submission, and the terms of the agreement should be written out and signed by the disputing parties.

WILLS AND EXECUTORS.

Who may make a Will.—All persons of sound mind and memory, of lawful age, freely exercising their own will, may dispose of their property by will.

Lawful Age is 21 years, in both male and female.

All wills should be in writing on paper or parchment. No exact forms of words is necessary to make a will good at law. The maker of a will if male, is called a testator; if female, testatrix.

Dying Intestate.—Any person who dies without having made a valid will is said to have died intestate. The property will then be distributed according to the laws of the Province in which it is situated by a person appointed by the Surrogate Court, called an Administrator. Though commonly used, a seal is not essential to a will. The last annuls all former ones.

A Wife's Dower.—A wife cannot be deprived of her dower, which is a life interest in one third of her husband's real estate, by will. A devise or bequest may be made to a wife in lieu of dower, but it must be clearly so expressed or she may become entitled to both.

Subsequent marriage revokes all wills made while single.

Testator's property is primarily liable for testator's debts and funeral expenses, which must be paid before any part of it can be distributed to legatees.

A will is good, though written with a lead pencil.

A Will must be signed in the presence of at least two witnesses who must sign in the presence of the testator and of each other. An executor is a competent witness.

Executors.—A person who is competent to make a will can appoint his own executors. If the persons so appointed are legally competent to transact business, the Surrogate Court will confirm the appointment. The persons so appointed are not obliged to serve.

It is not necessary that the witnesses should know the contents of the will. It is necessary that the testator acknowledges to them that it is his will, signs it in their presence, or acknowledges the signature already signed to be his, and requests them to sign as witnesses; they should sign as witnesses in the presence of testator and of each other.

Testator should write his own name in full. If unable to do so, his hand should be guided by another, and his name written, or a mark made near his name.

The following is the usual form when testator signs by mark.

John $\overset{\text{his}}{\underset{\text{mark.}}{\text{X}}}$ Smith.

The executors must first prove the will and be appointed by the Surrogate Court of the County in which the testator resided at the time of his death.

Executors are allowed one year in which to collect the assets and pay the debts before the payment of legacies can be enforced, though it is always well to perform the duties expeditiously.

Executors must keep a strict account of all dealings with the estate, or they will be held personally responsible. A devise or bequest to a witness, or to the husband or wife of such witness is invalid.

An addition to an executed will is called a codicil.

The same essentials apply to a codicil as to a will.

Legacies to subscribing witnesses are generally declared void.

SHORT FORM OF WILL.

I, Andrew Peterson, of the Town of Berlin, Merchant, being of sound and disposing mind and memory, do make and publish this as my last will and testament, hereby revoking all former wills and testamentary dispositions heretofore at any time by me made.

I hereby appoint my brother, Wm. Peterson, and my son in-law, John Graham, to be the executors of my will.

I hereby direct my said executors to pay all my just debts, funeral and testamentary expenses as soon as possible after my decease.

I hereby devise my house and premises known as No. 161 Spruce Avenue, in the Town of Berlin, to my wife, May Peterson, during the term of her natural life, and after her decease to my son, Robert Peterson, absolutely.

I devise and bequeath to my son, William Peterson, and my daughter Mary, the wife of John Graham, all the rest and residue of my real and personal estate in equal shares absolutely.

In witness whereof, I have hereto set my hand this 1st day of July, 1894.

Signed, sealed, etc, etc. Andrew Peterson.

SUNDRY IMPORTANT ITEMS.

GUARANTY.

Guaranty is an agreement whereby one person becomes responsible for the debt or default of another person. Sometimes the agreement is called guaranty and sometimes it is called suretyship.

The contract of guaranty or suretyship to be valid must be in writing, signed by the person who agrees to become responsible, (see statute of frauds, page 19, section 4).

There is quite a difference between guaranty of payment and guaranty of collection. Guaranty of payment is an agreement by the surety, that if the amount is not paid when due, the surety will immediately pay it without any effort being made to collect from the principal. Guaranty of collection is an agreement by the surety that he will pay it after due legal proceedings have failed to collect it of the principal. A guaranty or surety for the debts default or wrongful acts of another, is generally given in the form of a bond. The guarantors are called bondsmen, who are liable only to the extent stated in the bond. A person may indorse a note as a guaranty, or may sign with the maker as surety. (see forms.)

WITHOUT PREJUDICE.

The two words "without prejudice" have great importance when used in a legal sense. This use can be best shown by an illustration, viz.: Two persons are at variance and likely to be drawn into court, but the one desires

an amicable settlement and is willing to make any reasonable concession to effect it. He may therefore write these two words, "without prejudice," across the upper left hand corner of his letter, or in the body of the letter, and then make his proposition, whatever it may be. The effect of these words is, that if the other party should not accept the proposition or terms thus offered, and the case goes to suit, this letter cannot be used in court as evidence against the writer, Hence by using these words in that way a person who wishes to avoid litigation may safely make advances to secure a peaceful settlement, and if not successful his case is not prejudiced. A convenient form at the beginning of the letter would be similar to the following ;

Dear Sir : " Without prejudice " I hereby make you the following proposition, etc, :

REPLEVIN.

A Replevin is a form of action brought to recover the possession of specific goods unlawfully taken by the defendant and belonging to the plaintiff, or which the latter has present right of possession. It is done by obtaining a Judge's order for a Writ of Replevin. In case where the claimant can show that the delay in writing for a Judge's order would materially prejudice his rights to such property, a Writ of Replevin may issue before a Judge's order or rule of the Court is obtained.

Before the Sheriff acts upon a Writ of Replevin the claimant is required to give a bond for treble the amount of the property that he will prosecute the suit without delay, or make a return of the property if a return is adjudged, and pay such damages to the defendant as he may have sustained through the proceedings. If the value of the goods for which the Writ of Replevin is obtained does not exceed $60, the writ may issue from the Division Court, if over $60 and up to $200, the writ may issue from the County Court.

A copy of the writ is not served on the defendant until after the property has been replevied or as much of it as possible.

GARNISHEE.

Sometimes in a suit to recover money, a third party, called a garnishee, is brought in. A garnishee is an outside party supposed to owe the defendant money, who is ordered not to pay the money to the defendant but to pay it into court, or keep it subject to the order of the court. Suppose A sues B to recover money due him, which B refuses to pay. Before or during the progress of the suit, A learns that C is indebted to B. A then may have a garnishee summons issued for C, ordering him not to pay over any money which he may have belonging to B, and also ordering him to appear in court and answer questions concerning his indebtedness. If on examination it is discovered that he is indebted to B, and the debt is one which by law is subject to garnishment, the money is either ordered to be paid into court or he is ordered to keep it subject to order from the court. Then, if in the suit judgment is rendered against B, the money, or a portion of it, is given to A.

BUSINESS AND LEGAL FORMS.

Promissory Note—Non-Interest Bearing.

$672. Hamilton, Ont., Oct. 15, 1897.

Thirty days after date, I promise to pay Wm. H. Bunberry, or order, Six Hundred Seventy-two Dollars, value received.

W. H. GOODMAN.

Promissory Note—Interest Bearing.

$450. Toronto, Ont., Nov. 1, 1897.

Three months after date, we promise to pay Henry D. Frank, or order, Four Hundred Fifty Dollars, value received, at The Merchants Bank here, with interest.

BROWN BROS. & CO.

Promissory Note—Joint and Several.

$1260. London, Ont., Oct. 14, 1897.

Two months after date, we jointly and severally promise to pay William Taylor & Son, or order, Twelve Hundred Sixty Dollars, value received, with interest at 5%.

EDWARD LUMSDEN.
S. G. WOODWORTH.

Promissory Note—Not Negotiable.

$100. Belleville, Sept. 3, 1897.

Sixty days after date, I promise to pay L. S. Bearman, One Hundred Dollars, value received.

FRED. G. HUNT.

Promissory Note—On Demand, With Surety.

$750. Ottawa, Ont. Sept. 21, 1897.

On demand, I promise to pay The E. B. Eddy Company, or order, Seven Hundred Fifty Dollars, value received, with interest at 7% per annum.

JOHN W. JONES.
WM S. WOODS, Surety.

Judgment Note.

$900. Stratford, Ont., Nov. 1, 1897.

Three months after date, I promise to pay J. B. Ellis & Co., or order, Nine Hundred Dollars, value received, with interest at 5%.

And I do hereby confess judgment for the above sum, with interest and cost of suit, a release of all errors and waiver of all rights to inquiry and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

T. D. BRADLEY

Chattel Note.

$500. Woodstock, Ont., Aug. 1, 1897.

On or before Nov. 1, 1897, for value received, I promise to pay A. R. Bale, Five Hundred Dollars; to be paid said Bale at my warehouse by the delivery to him of flour at current prices, and as he may require it.

BENJ. A. STOREY,

Accommodation Note.—With Indorsements.

$250. Montreal, Que., Sept. 12, 1897.

One month after date, I promise to pay to myself, or order, Two Hundred Fifty Dollars, value received, at Merchants Bank.

H. HANNAH.

Written across the back : H. Hannah, Wm. Brown.

Promissory Note—Bearing Interest Until Paid.

$129. Toronto, Ont, July 7, 1897.

Thirty days after date, I promise to pay C. E. Ruthven, or order, One Hundred Twenty-nine Dollars, value received, at the Bank of Toronto, with interest at 7% before and after maturity until paid.

W. H. MCMASTER.

Sight Draft.

$222. Chatham, Ont, Oct. 7, 1897.

At sight pay to C. S. Livingstone, or order, Two Hundred Twenty-two Dollars, value received, and charge to the account of.

R. W. LOUDEN.

To Samuel Baker,
Toronto, Ont.

Time Draft.—Accepted.

$95. Hamilton, Ont, Nov. 9, 1897.

Sixty days' sight, pay to R. W. Wright, or order, Ninety-five Dollars, value received and charge to the account of.

FREDERICK HUDSON.

To M. S. Griffin.
Guelph, Ont.

Written across the face of the draft: Accepted, Nov. 10, 1897, Payable at The Traders Bank, M. S. Griffin.

Cheque.—Certified.

No. 315. Toronto, Ont., Oct., 15, 1897,

THE CANADIAN BANK OF COMMERCE.

Pay to Henry D. Huntington,.....or order, $792.
Seven Hundred Ninety-two.....Dollars.

J. B. WASHBURN.

Stamped or written across the face of the cheque: Accepted, Oct. 15, 1897, J. B. H., Teller.

Guaranty of Payment.

For value received, I hereby guarantee the payment of the within note.

D. D. HUNTER.

Guaranty of Collection.

For value received, I hereby guarantee the collection of the within note.

T. D. BABCOCK.

Receipt—To Apply on Account.

Toronto, Ont., Oct. 17, 1897.

Received of J. D. Hanna, One Hundred Fifteen Dollars to apply on account.

$115. JOHNSON & FRASER.

Receipt—In Full of All Demands.

Hamilton, Ont., Nov. 4, 1897.

Received of J. B. Parsons, Seventy-seven Dollars, in full of all demands against him.

$77. JAMES BOWMAN.

Receipt To Apply on Note.

Burlington, Ont., Sept. 22, 1897.

Received of Armstrong & Eddy, Two Hundred Twenty-five Dollars to apply on their note dated July 1, 1897, given to me, being the same payment which I have indorsed on said note.

$225. W. R. SMITHSON.

Due Bill—Payable in Money.

$25. Guelph, Ont., Nov. 10, 1897.

Due Amos R. Jennings, or order, Twenty-five Dollars.

H. R. BROWN.

Due Bill—Payable in Goods.

$200. Galt, Ont., Dec. 3, 1897.

Due William Lee, or bearer, Two Hundred Dollars in goods from my store.

JOHN HAMILTON.

Subscription Paper—In Form of Promissory Note.

We, the undersigned, hereby promise to pay the sums set opposite our respective names to Jno. W. Jones, for the purpose of building a Sunday School for the Central Presbyterian Church, Hamilton.

A. W. Graham.	$500	S. S. Moore,	$200
		R. W. Gunn,	200

A Set of Foreign Exchange.

£750. Toronto, Aug. 20, 1897.

1st. At sight of this my FIRST of Exchange, (*second and third of same date and tenor unpaid*), pay to the order of James Carter & Sons, Seven Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERTSON & CO.

To The Lloyd Banking Co.,
London, England.

£750. Toronto, Aug. 20th, 1897.

2nd. At sight of this my SECOND of Exchange, (*first and third of same date and tenor unpaid*), pay to the order of James Carter & Sons, Seven Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERTSON & CO.

To The Lloyd Banking Co.,
London, England.

£750. Toronto, Aug. 20, 1897.

3rd. At sight of this my THIRD of Exchange, (*first and second of same date and tenor unpaid,*) pay to the order of James Carter & Sons, Seven Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERTSON & CO.

To The Lloyd Banking Co.,
London, England.

Certificate of Deposit.

$840. No. 420.

THE BANK OF MONTREAL.

Ottawa, Ont., August 21st, 1897.

Adam Whitworth, has deposited in this Bank, Eight Hundred and Forty Dollars, payable to the order of himself on the return of this certificate properly indorsed.

J. C. HENDERSON,
Cashier.

Letter of Credit.

No. 9224. Stratford, Ont., Aug. 21, 1897.

TO THE CORRESPONDENTS OF THE CANADIAN BANK OF COMMERCE.

£500.

GENTLEMEN,—We have the pleasure of introducing to you the bearer Mr. Samuel Thomson of this place, who purposes visiting England and France, and desires to open a credit with you. Kindly furnish him with such funds as he may require, not to exceed Five Hundred Pounds Sterling, on his sight draft drawn on The Lloyd Banking Co., London, each draft to be marked as drawn on the Canadian Bank of Commerce Letter of Credit, No. 9224. Each draft to be indorsed on the back hereof. Kindly have drafts signed in your presence, and compare carefully with signature below.

A. D. HUNTLEY, Manager.
ALEX. HENDERSON, Accountant.

SAMUEL THOMSON.

Articles of Co-Partnership.

Articles of Co-partnership made this 1st day of June, 1897, between Daniel Webster and Charles F. Crandall, both of the City of Hamilton, witnesseth:

I. The parties above named have agreed to become co-partners in business, and do hereby agree to be co-partners under the firm name of Webster and Crandall, in the business of manufacturing, buying and selling paints, oils and painters' supplies, and conducting a general paint and oil store in said City of Hamilton.

II. The partnership hereby formed shall commence at the date hereof and continue for the term of five years, unless dissolved sooner by the operation of law.

III. Said Crandall shall contribute to the partnership capital the sum of Twenty-five (25) Thousand Dollars in cash, and said Webster shall contribute the sum of Five (5) Thousand Dollars in cash, and his skill and knowledge of the business, and the contribution of said Webster as aforesaid is deemed equal to the contribution of said Crandall.

IV, It is agreed that said Webster shall devote his whole time and energy to the conduct of the business and the furtherance of its success, but said Crandall shall not be under obligation to devote more than one-half of his time in attention to the partnership business, and each of said partners may draw out of the business not to exceed $25 weekly for personal expenses.

V. It is agreed that each of said partners shall pay and discharge equally all rents and expenses of conducting the business, and all gains and profits which shall arise from business shall be equally divided after the payment and discharge of all losses by ill commodities, bad debts, or otherwise, and all such losses, and all losses arising from the conduct of the business shall be born and shared equally between the partners.

VI. It is mutually agreed that true books of account shall be kept wherein each of the said partners shall enter all moneys by them or either of them received, paid, laid out or expended in and about said business, as also all goods, wares and merchandise by them or either of them bought or sold, by reason or on account of said business, and all matters and things whatsoever pertaining to said business, and that either of said partners shall at all times have free and uninterrupted access to said books, and at the end of each quarter hereafter, each of said partners shall make and render to the other a true and correct account of all profits and increase by them or either of them, and of all losses by them or either of them sustained, and of all payments, receipts and disbursements whatsoever connected with said business.

VII. It is further agreed that neither of said partners, during the conduct of said business, shall indorse any note or become surety for any person without the consent of the other, and neither of said partners shall give the firm note without the knowledge and consent of the other.

VIII. It is mutually agreed that at the end of said partnership each of said partners shall make and render to the other a just and final account of all things relating to the said business, and there shall be an equal division of the partnership capital and the increase thereof, and an equal bearing and sharing of the losses and liabilities.

In Witness whereof, the parties hereto have hereunto set their hands and seals in duplicate, the day and year first above written.

DANIEL WEBSTER, [SEAL.]
CHARLES F. CRANDALL. [SEAL.]

Statutory Deed.

This Indenture made (in duplicate) the first day of April, in the year of our Lord one thousand eight hundred and ninety-seven, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF CONVEYANCES.

BETWEEN Edward T. Hemming of the Township of Barton, County of Wentworth, and Province of Ontario, merchant, of the first part, and

Ada Hemming, wife of the party of the first part, of the second part, and Walter Jones of the Township of East Flamboro, County of Wentworth and province aforesaid, yeoman, of the third part.

Witnesseth that in consideration of two thousand dollars ($2000) lawful money of Canada, now paid by the said party of the third part to the said party of the first part, (the receipt whereof is hereby acknowledged,) he, the said party of the first part, DOTH GRANT unto the said party of the third part, in fee simple.

All and Singular that certain parcel or tract of land and premises situate, lying and being in the Township of Barton County of Wentworth and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the South part of lot Number 49 in the 9th Concession of the Township of Barton aforesaid.

To Have and To Hold unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use FOREVER, SUBJECT NEVERTHELESS, to the reservations, limitations, provisos and conditions expressed in the original GRANT made thereof from the Crown.

(NOTE: The following covenants make a warranty deed of this.)

The said party of the first part COVENANTS with the said party of the third part, THAT he has the right to convey the

said lands to the said party of the third part, notwithstanding any act of the said party of the first part.

And that the said party of the third part shall have quiet possession of the said lands, free from all incumbrances.

And the said party of the first part, COVENANTS with the said party of the third part, that he will execute such further assurances of the said land as may be requisite.

And the said party of the first part, COVENANTS with the said party of the third part, that he has done no act to encumber the said lands.

And the said party of the first part RELEASES to the said party of the third part, ALL HIS CLAIMS upon the said lands

And Ada Hemming, the party of the second part, hereby bars her dower in the said lands.

In Witness Whereof the said parties have hereunto set their hands and seals-

SIGNED, SEALED AND DELIVERED in presence of CHARLES BLACK. } E. T. HEMMING, [L. S.]
ADA HEMMING. [L. S.]

COUNTY OF WENTWORTH: TO WIT: } I, Charles Black of the Township of Barton, County of Wentworth and Province of Ontario, gentleman, make oath and say :

1. That I was personally present and did see the within instrument and duplicate thereof duly signed, sealed and executed by Edward T. Hemming and Ada Hemming, two of the parties thereto.

2. That the said Instrument and Duplicate were executed in the County of Wentworth.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me in Barton in County of Wentworth, this fourth day of April, A. D. 1897 } CHARLES BLACK.

JOHN D. WILLSON,

A Commissioner for taking affidavits in the County of Wentworth.

Form of Statutory Lease.

This Indenture, made the Twentieth day of September, one thousand eight hundred and ninety-seven, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF LEASES:

BETWEEN John Jones, of the City of Brantford, County of Brant, Province of Ontario, Merchant, the party of the First Part, and William McCormack, of the same place, aforesaid, Teacher, the party of the Second Part.

Witnesseth, that in consideration of the Rents, Covenants and Agreements hereinafter reserved and contained on the part of the said party of the Second Part, his executors, administrators and assigns to be paid, observed and performed, the said party of the First Part hath demised and leased, and by these presents doth demise and Lease unto the said party of the Second Part, his heirs, executors, administrators and assigns.

All that certain parcel or tract of land situate lying and being in the City of Brantford, in the County of Brant, Province of Ontario, and being more particularly described as Lot number Ninety-one, on the North side of William Street, in the aforesaid City, and containing by admeasurement one acre, more or less.

To Have and to Hold, the said demised premises for and during the term of Five years, to be computed from the First day of October, one thousand eight hundred and ninety-seven, and from thenceforth next ensuing, and fully to be complete and ended, Yielding and Paying therefor yearly and every year during the said term hereby granted, unto the said party of the First Part, his heirs, executors, administrators or assigns, the sum of One Hundred and Twenty Dollars of lawful money of Canada, payable on the following days and times, that is to say: Ten dollars to be paid on the first day of each month, the first of such payments to become due and to be made on the First day of April next.

That the said party of the Second Part covenants with the said party of the First Part to pay rent and to pay taxes, and to repair and keep up fences, and not to cut down timber; and that the said party of the First Part may enter and view state of repair, and that the said party of the Second Part will repair according to notice, and will not assign or sub-let without leave, and that he will leave the premises in good repair, and will not carry on on said premises any business or occupation which may be offensive or annoying to the said party of the First Part, or his assigns, and also that if the term hereby granted shall be at any time seized or taken into execution or in attachment by any creditor of the said party of the Second Part, or if the said party of the Second Part shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the then current month's rent shall immediately become due and payable, and the said term shall immediately become forfeited and void, but next current month's rent shall, nevertheless, be at once due and payable.

Proviso for re-entry by the said party of the First Part, on non-payment of rent, or non-performance of Covenants:

The said party of the First Part COVENANTS with the said party of the Second Part for quiet enjoyment.

In Witness Whereof the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED, In the presence of G. W. GOULD. — J. JONES. (L. S.) WM. MCCORMACK, (L. S.)

ADDITIONAL BUSINESS AND LEGAL FORMS WILL BE FOUND ON THE FOLLOWING PAGES:

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(L. S.)
CK, (L. S.)

WILL BE

DEFINITIONS.

Abandonment. In marine insurance, the giving up of property partly destroyed, by the owner to the insurer.

Abatement of a Nuisance. The remedy which the common law allows a party injured by a nuisance, of destroying or forcibly removing it, so long as he occasions no damage beyond what the abatement necessarily requires.

Abatement Among Legatees. The proportionate reduction of legacies, where the estate bequeathed by a will is not sufficient to pay all legacies in full.

Abjuration of Allegiance. The declaration under oath required of every alien before naturalization, renouncing all allegiance to any other sovereign.

Absolute Conveyance. A transfer of property free of any condition or reservation.

Abutting. Bordering upon. Lands bounded by a highway or fresh water stream abut on the stream or road, and the owners are called abutting owners.

Acceptance. In mercantile law : (1) The act by which the person upon whom a bill of exchange or other order is drawn, engages to pay it. (2) The bill after it has been accepted.

Acceptor. One who accepts an order, draft, or bill of exchange.

Accommodation Paper. Commercial paper for which no consideration passed between the original parties.

Accord. Agreement.

Account Stated. An account balanced and rendered, and assented to by the parties although not paid.

Acknowledgment. The act by which a party who has executed an instrument declares or *acknowledges* it before a competent officer to be his or her act and deed.

Action. The formal means of recovering one's rights in a court of justice—a suit.

Act of God. Any accident produced by a physical cause which is irresistible, such as lightning, tempest, etc.

Ad Valorem Duties. Customs duties imposed upon imported articles according to either the value or the actual cost.

Adjudication. The act of a court in giving judgment in suit or controversy.

Admeasurement of Dower. The setting apart for the use of the widow of such a portion of land as will amount to her dower or "third;" called also assignment of dower.

Administrator. One who administers on the property or estate of a person dying intestate, and is accountable for the same.

Affidavit. A statement in writing, signed by the person making it, called the affiant, and sworn to before a notary public or officer authorized to take oaths.

Affinity. Relationship by marriage.

Affreightment. The hiring of a ship for the conveyance of goods.

Agency. The relation existing between two parties, by which one is authorized to do certain acts for the other, with other parties.

Agent. Any person who is employed by another to do any act for the employer's benefit or account.

Age of Consent. The age at which infants are capable of making a valid contract of marriage.

Alien. One born out of the jurisdiction of this country, and owing allegiance to a foreign sovereign.

Alien Enemy. An alien who is the subject of a hostile power.

Alimony. An allowance made to a wife out of her husband's estate, during a suit for divorce or separation, or at its termination, for her life or for a shorter period.

Alteration. The changing of the words or figures of a written instrument by the holder after it has been executed and delivered. If the change is not sufficiently material as to mislead anyone, it is not usually called an alteration.

Amotion. Removal of an officer of a corporation.

Ante-dated. Dated at a time earlier than the actual date.

Annulment. The act of making void.

Appurtenance. In a deed or lease, anything which will go with the land, as a right of way or a yard which has always been used with it.

Arbitration. The investigation and determination of a cause or matter in controversy by an unofficial person, or arbitrator.

Arbitrator. A disinterested person selected by parties in dispute to decide the controversy.

Articles of Copartnership. The written agreement by which a copartnership is formed.

Assault. An illegal and forcible attempt or offer to do a bodily harm to another.

Assent. Act of agreeing to anything ; consent.

Assets. Property available for the payment of debts.

Assignee. The person to whom the failing debtor transfers all his remaining property for the purpose of having it distributed among his creditors ; one to whom anything is assigned.

Assignment. A transfer by a failing debtor of his property to an assignee. A transfer by one person to another of any property personal or real.

Assignor. One who assigns property.

Assurance and Assured. Same as *Insurance* and *Insured*.

Attachment. The seizure of a defendant's property by legal process, in order to satisfy any judgment which may be rendered against him in the suit,

Attorney in Fact. An agent appointed by power of attorney.

Award. The decision of arbitrators.

Bailment. A delivery of goods in trust upon a contract, express or implied, that the trust shall be faithfully executed on the part of the bailee The *bailor* is he who delivers ; the *bailee*, he to whom delivery is made. The hire of personal property, of services, of custody and of carriage are species of bailment.

Bank Bill. A written promise to pay to the bearer on demand a certain sum of money, issued by a bank and used as money.

Bank Note. Same as *Bank Bill*. A note payable at a bank.

Bankruptcy. The condition of one who is unable to pay his debts.

Bargain. A common synonym of contract.

Barratry. Any breach of duty committed by the master of a vessel or the seamen, without the consent of the owner, by reason of which the ship or cargo is injured.

Barter. To trade by exchange of goods, in contra-distinction from trading by the use of money.

Battery. An unlawful assault committed by one person upon another.

Beneficiary. (1) In life insurance, the person to whom a policy is made payable. (2) The person for whose benefit another holds the legal title to real estate.

Betterments. Improvements made to real estate which render it better than mere repairs.

Beyond Seas. Denotes absence from the country and generally held to mean absence from the particular State.

Bigamy. The wilfully contracting a second marriage while a husband or wife is still living.

Bill of Exchange. A direction in writing, by the person who signs it, ordering the one to whom it is addressed to pay a third person a definite sum of money at a specified time.

Bill of Lading. A document delivered by a carrier to one sending goods by him, acknowledging that they have been received by him for transportation to a certain place. It is both a receipt and a contract.

Bills Receivable. Notes, drafts or other securities for money which a merchant holds

Bill of Sale. An agreement in writing by which one person sells his interest in personal property to another.

Blank Indorsement. One in which no particular person is named as the one to whom payment is to be made. It consists of the indorser's name alone.

Blockade. The closing of communication with a port or place by hostile forces

Body Corporate. A corporation.

Bona Fide. In good faith, as distinguished from Mala Fide, in bad faith.

Bond. A written and sealed instrument by which one agrees to pay to another a certain sum of money, unless something else specified therein is due.

Bonus. An additional premium paid for the use of money beyond the legal interest.

Bottomry Bond. An obligation given for a loan upon a vessel and accruing freight.

Bought and Sold Note. A written memorandum of sale, delivered by a broker affecting a sale, to the buyer.

Breach. In the law of contracts, the violation of an agreement or obligation.

Bribery. Receiving or offering a reward to affect the conduct of a public officer.

Broker. One engaged in negotiating contracts for the purchase or sale of property in which he has no interest.

Bullion. Any kind of gold or silver in the mass or lump.

By-Bidder. A person employed to bid at auctions in order to raise the price of articles to be sold, same as underbidder.

By-Laws. The private laws or regulations made by a corporation for its own government.

Cancellation. The manual act of erasing or destroying a writing.

Capita. By the head.

Capital Stock. The fund or property, as a whole, contributed or supposed to have been contributed to a corporation at its organization, as its property.

Caveat Emptor. Latin phrase, meaning "let the purchaser beware," and applies to a case in which the thing sold is before the buyer and he examines it.

Caveat. In the patent law, a notice from an inventor not to issue a patent of a particular description to another.

Certificate of Deposit. A certificate issued by a bank or banker, showing that a certain sum of money has been deposited there, payable to a certain person, or to his order, or to the bearer.

Certificate of Stock. A certificate given by the proper officers of a corporation, showing that a certain person owns a certain number of shares of the capital stock.

Certification (of cheque). The signature of the proper officer of the bank written across its face, sometimes with and sometimes without the word "certified," or "good." It is a recognition of the cheque by the bank as good in two particulars, viz.: (1) That the drawer's signature is genuine, and (2) that he has that amount of money in the bank.

Charter. (1) A special act of legislature creating a particular corporation. (2) To hire or let a vessel or part of it.

Chartered Ship. One let wholly or in part.

Charter Party. The written instrument by which the owner of a vessel lets it, or part of it, to another.

Chattel Mortgage. A conditional sale of personal property, one which is to become void if a certain thing happens. Chiefly used as a security for payment.

Chattel Real or Real Chattel. An interest connected with real estate, as a lease.

Chattels. Commonly means goods of any kind, or every species of personal property.

Cheque. A written order for money drawn upon a bank or banker, and payable immediately.

Chose in Action. A thing of which one has not the possession, but only a right to demand it by action at law.

Chose in Possession. Personal property of which one has the actual possession.

Civil Law. The system of law of ancient Rome.

Civil Remedy. The method of redressing an injury inflicted by one person upon another.

Clearing House. An office where bankers settle daily with each other the balances of their accounts.

Codicil. Some addition to, or qualification of a will, executed after the will.

Collateral. Property pledged as security for the performance of a contract.

Common Carrier. One who, as a business, undertakes for hire to transport from place to place, passengers or goods of all who choose to employ him.

Common Law. The unwritten law as distinguished from written or statute law. The old law of England that derives its force from long usage and custom.

Common Seal. The seal of a corporation.

Compact. An agreement between parties similar to a contract.

Competency. The legal fitness of a witness to give evidence on the trial of an action.

Composition Deed. An agreement between an insolvent debtor and his creditors by which upon payment to each of some fixed proportion of his claim, they all agree to release the debtor from the balance of their claims.

Compromise. An agreement between a debtor and his creditors, by which they agree to accept a certain proportion of the amounts due, and discharge him from the remainder.

Concurrent. Existing together. A consideration is concurrent when the acts of the parties are to be performed at the same time.

Condition Precedent. An act which must be performed by one person before another is liable, or in order to make him liable.

Confirmation. The ratification of a contract which was voidable, whereby it is made valid.

Conflict of Laws. The difference between the laws of two or more Countries.

Confusion of Goods. A mixture of the goods of two or more persons so that they cannot be distinguished.

Consanguinity. Relation by blood.

Consent. A concurrence of the wills of two or more contracting parties.

Consideration. The reason or inducement in a contract upon which the parties consent to be bound.

Consignee. One to whom merchandise, given to a carrier by another person for transportation, is directed.

Consignment. The goods shipped through a common carrier by the consignor to the consignee.

Consignor. One who gives merchandise to a carrier for transportation to another.

Contract. An agreement between two or more persons to do or not to do a particular thing.

Conversion. An unlawful exercise of ownership over goods or personal property belonging to another.

Conveyance. (1) The act of carrying between land or water. (2) The means of conveyance. A written instrument by which an estate in land is transferred from one to another.

Co-Partnership. Same as partnership.

Corporation. An artificial being or person endowed by law with the capacity of perpetual succession, and of acting in certain respects like a natural person. When it consists of one individual it is termed a corporation *sole*, and when composed of a collection of several individuals it is called a corporation *aggregate*.

Copyright. The exclusive privilege secured from a government for printing, publishing and selling copies of writings or drawings.

Counter-Claim. Same as *Set-off*.

Course of Exchange. The current price of bills of exchange between two places.

Covenant. Any promise contained in a sealed instrument. The person to whom the promise is made is the *Covenantee*. The person making the promise is the Covenantor.

Coverture. The legal state and condition of a married woman.

Criminal Remedy. The method of punishing a wrong-doer for some crime committed by him against society.

Curtesy. The estate a man has in the lands of his wife upon her death, in case a living child has been born to them during their marriage.

Damages. Compensation in money to be paid by one person to another for an injury afflicted by the former upon the latter, or for the failure to keep a contract.

Day. Twenty-four hours. An entire day.

Days of Grace. Days (usually three) allowed by custom for the payment of bills and notes beyond the day expressed for payment on the face of them.

Declaration of Intention. The act of an alien who goes before a court and formally declares his intention to become a citizen of Canada.

Dedication. An appropriation of land made by the owner to some public use, usually for a highway, and accepted for such use by the public.

Default. Omission; neglect or failure.

Defeasance. An instrument which defeats the effect of another instrument. If it is in the same deed it is an addition; if by itself it is a defeasance.

Defense. The answer made by the defendant to the plaintiff's action, by demurrer or plea at law.

Delivery. The transfer of a written instrument from the person executing it, or the grantor, to the person entitled to receive it, or the grantee.

Demand. Presentment for payment.

Demurrage. The allowance to be made by the shipper to the vessel owner as damages for the detention of the vessel beyond the time specified in the charter party.

Deposit. A bailment or delivery of goods to be kept and returned without recompense.

Deposition. The testimony of a witness reduced to writing to be used in court.

Descent. Inheritance of real property.

Deviation. In the law of marine insurance, a voluntary departure without necessity from the regular course of the specific voyage insured.

Devisee. A person to whom real property is devised or willed.

Disability. Want of qualification; incapacity to do a legal act.

Disaffirmance. The annulling or cancelling of a voidable contract.

Discount. (1) The taking of interest in advance. (2) A deduction from the account asked, or from an account, debt or demand.

Disfranchisement. Expulsion of a member from a corporation.

Dishonor. The non-payment of negotiable paper when it is due.

Distress. The taking of personal property to enforce the payment of something due, as rent.

Distribution. The division among those entitled, called the next of kin, of the personal property of one dying without a will.

Divorce. The separation of husband and wife by the sentence of the law.

Dollar. The money unit of this country.

Domestic Relations. The relations of the members of a household or family.

Domicile. The place where a man has his permanent home, and to which he intends to return if absent.

Dower. The right of a widow to the use or ownership of some portion of the real estate owned by her husband.

Draft. Same as bill of exchange.

Drawee. The person upon whom a bill of exchange is drawn, who is directed to make the payments.

Drawer. The person who draws or makes a bill of exchange.

Duress. Personal restraint or compulsion.

Easement. The right to use another's land.

Effects. All kinds of personal property.

Ejectment. A form of law suit to regain possession of real property.

Embezzlement. The fraudulent removal or secretion of personal property by one who is entrusted with it.

Emblements. Growing crops of any kind produced by expense and labor.

Embracery. The attempt to corrupt or influence a jury.

Eminent Domain. The right of the sovereign power to take private property for public purposes.

Enact. To make a law or to establish a by law.

Equitable Estate. An interest in land not evidenced by a deed, but of which a Court of Equity will take notice.

Equity of Redemption. The right which a mortgagor has to redeem his estate after the mortgage has become due.

Escheat. The reverting of land to the State upon the death of the owner without lawful heirs.

Escrow. A deed or bond delivered to a third party to be held and delivered to the grantee or creditor upon the performance of some condition.

Estate. An interest in real property.

Estate by Curtes. See *Curtesy.*

Estate for Life. An interest in land for life.

Estate in Fee-Simple. The interest which a man or his heirs have in land without end or limit.

Eviction. The forcible removal of a tenant from land leased by him or the doing of any act by the landlord which deprives the tenant of the use of the land.

Executed, (of a contract). Finished.

Execution. (1) A written command issued to a sheriff or constable, after a judgment, directing him to enforce it. (2) The act of signing and sealing a legal instrument, or giving it the form required to make it a valid act.

Executor. One to whom is committed the execution or carrying out of the terms of a will.

Executory (of a contract). Unfinished.

Exemplary Damages. Damages allowed as a punishment for a wrongful act deliberately or maliciously committed. Such damages are in addition to actual damages.

Ex Post Facto Law. A statute which renders an act punishable in a manner in which it was not punishable when it was committed.

Extradition. The surrender by one government to another of a person charged with crime.

Factor. An agent employed to sell goods on commission,

Fee Simple. Full ownership in lands.

Feud. An estate in land, held of a superior by service; a fief.

Feudal System. The system of feuds or fiefs.

Firm. All the members of a partnership taken collectively.

Fixtures. Articles of personal property which have become affixed to land.

Foreclosure. The process of cutting off the right or interest of the mortgagor and his assignees in mortgaged premises.

Forfeiture. A loss of property, right, or office, as a punishment for some illegal act or negligence. Sometimes applied to the thing forfeited.

Forgery. The fraudulently making or altering of a written instrument.

Franchise. A privilege, or right, conferred by grant from government upon individuals.

Fraud. Any cunning, deception, or artifice used to circumvent, cheat, or deceive another.

Freight. The compensation to be paid a carrier for the transportation of goods, or the goods themselves while being transported.

General Average. A contribution made by the owners of a vessel and cargo toward the loss sustained by one of their number, whose property has been sacrificed for the general safety.

General Ship. A vessel navigated by its owner, receiving and carrying freight indifferently for all who apply.

Goods. Same as *chattels* and *effects*.

Good Will. Benefit arising from the successful conduct of business by a certain person or firm, usually in a certain place; it is a property subject to transfer.

Guaranty. A contract whereby one person engages to be answerable for the debt or default of another person. *Guarantor* is he who makes the guaranty.

Guardian. One who is entitled to the custody of the person or property of an infant.

Guest. A person received and entertained at an inn or hotel.

Habeas Corpus. A direction signed by a judge or officer of a court directing a person detaining another to produce the prisoner at a certain time and place.

Heir. One who inherits land upon the death of the owner.

Highway. A passage, road or street, which every citizen has the right to use.

Hire. A bailment in which the compensation is to be given for the use of a thing, or for labor and services performed upon it.

Holding Over. The act of a tenant in remaining in possession of land after the expiration of his lease.

Idiot. One who never had reasoning power.

Importation. The act of bringing goods and merchandise into this Country from a foreign country.

Imposts. Duties on imported goods.

Inchoate. Incipient; incomplete

Incompetency. Lack of necessary legal qualifications.

Incorporate. To form into a corporation.

Incumbrance. A lien upon land as by judgment or mortgage.

Indemnity. Compensation for damage suffered, or that which is given or promised to a person to prevent his suffering damage.

Indorsement (of commercial paper). (1) A name, with or without other words, written on the back of the paper. (2) The agreement implied in one's writing his name on the back of commercial paper, to pay it if the principal debtor does not. The one who makes the indorsement is called the *indorser*. The person in whose favor the indorsement is made is called the *indorsee*.

Infant. In law, is one under the age of twenty-one years.

Injunction. An order or direction of the court compelling a certain person to refrain from doing some particular act or thing.

Insolvency. Same as *Bankruptcy*.

Insurable Interest. Such an interest in the thing insured that the person possessing it may be injured by the risk to which the thing insured is exposed,

Insurance. A contract of indemnity against loss from certain causes. The *insurer* is the party agreeing to make the insurance.

Interest. Compensation allowed by the borrower of money to the lender for its use, or compensation paid by a debtor to his creditor, as recompense for the detention of the debt.

Invalid. Of no legal force.

Inventory. (1) An account or catalogue of goods or movables, (2) In law a list or schedule in writing of the goods, chattels, and credits (and sometimes of the real estate) of a testator or intestate, made by an executor or administrator.

Jettison. The casting out from a vessel of a part of the cargo, in order to avoid a ship-wreck. (2) The cargo thus cast out. If the goods float it is called flotsam.

Joint Stock Company. A species of partnership.

Joint Tenants. Two or more persons to whom land is conveyed by deed or devised by will.

Judgment. The sentence of the law pronounced by the court upon any matter contained in the record, or in any case tried by the court.

Judgment Debtor. Party against whom a judgment is obtained.

Judgment Note. A promissory note in the usual form, and containing in addition a power of attorney on the part of the maker authorizing the holder to take judgment for the amount due, if the note is dishonored.

Judicial Sale. A sale directed by a court; as a sale on the foreclosure of a mortgage.

Landlord. (1) One who owns and rents or leases lands or houses. (2) The host or keeper of a hotel; an inn-keeper.

Law. The rules and methods by which society compels or restrains the action of its members.

Law Merchant. The general body of usages in matters relative to commerce.

Lay Corporation. A corporation composed of lay persons, or for lay purposes, as distinguished from religious or charitable corporations.

Lease. A contract by which one person grants to another for a period, the use of certain real estate.

Legacy. A gift by will; commonly applied to money or personal property.

Legal Tender. That kind of money which by law can be offered in payment of a debt.

Lessee. A person to whom a lease is made.

Letter of Attorney. Another name for power of attorney.

Letters of Administration. An instrument issued out of the court having jurisdiction, granting power to settle the estate of one dying without leaving a will.

Letter of Credit. A written direction by some well-known banker authorizing the party to whom it is addressed to draw upon him in a particular manner for any amount he chooses, up to a specified limit.

Letters Testamentary. An instrument of the court having jurisdiction, granting power to the person named as executor in a will to carry out the provisions of the will.

Libel. To defame by published writing, printing, signs or pictures.

License. A permission or right granted to another, by one having authority, to do an act which would be illegal if unauthorized.

Lien. A right which one person has to retain the property of another by way of security for a debt or claim.

Liquidate. To pay; to settle an account.

Liquidated Damages. Damages agreed upon by the parties to a contract, at the time of the making of the contract, to be paid by the party failing to perform it.

Litigation. The act of litigating; judicial contest; a suit at law.

Loan. A bailment of an article for use or consumption without award. If the loan is for consumption, the article is to be returned in time; if the loan is for use, the article is to be returned without compensation for the use.

Log-Book. A ship's journal containing a minute account of the ship's course, and a reference to every occurrence of the voyage.

Lottery. A scheme for the distribution of prizes by chance.

Low Water Mark. That part of the shore of the sea to which the waters recede when the tide is lowest.

Lucid Intervals. Periods from time to time in cases of lunacy in which the person afflicted becomes sane.

Lunatics. Persons who have lost their reason.

Maintenance. Support by means of food, clothing and other necessaries.

Malicious Mischief. The wanton or reckless destruction of property or injury to the person.

Malicious Prosecution. The willful institution of a law suit or criminal proceeding without probable cause.

Mandate. A bailment of personal property in which the bailee undertakes without compensation to do some act for the bailor in respect to the thing bailed. The bailor is generally termed the *mandator*, and the bailee the *mandatary*.

Mania. A form of insanity.

Manifesto. A declaration by a nation stating the reasons for its acts toward another nation.

Maritime Law. That branch of the law which relates to the affairs of navigation and shipping.

Marriage Settlement. An agreement made by parties contemplating marriage by which the title to real or personal property is changed.

Martial Law. The military rule existing in time of war.

Material Men. Persons who furnish materials to be used in the construction of ships or buildings.

Maturity. The time at which commercial paper legally becomes due.

Measure of Damages. The rule by which the damages sustained by the plaintiff in a law suit to be estimated.

Merger. The absorption or extinguishment of one contract in another.

Minor. Same as *Infant*.

Misdemeanor. A lower kind of crime ; an indictable offense not amounting to felony.

Misnomer. In contracts a mistake in the name of a party ; it does not avoid the contract if the proper party can be ascertained. A misnomer of a legatee in a will does not generally avoid the legacy.

Misrepresentation. A false and fraudulent statement made by a party to a contract relative to a particular fact, knowing that the statement is untrue,

Misuser. The abuse of any liberty or benefit.

Money. The common medium of exchange in civilized nations.

Month. Generally in this country, where used in contracts, means a calendar month.

Monuments. Permanent land-marks indicating the boundaries of land.

Mortgage. A grant or conveyance of an estate or property to a creditor, for the security of a debt, and to become void on payment of such debt. The *mortgagor* is the one who gives the mortgage upon his property ; the *mortgagee* the one to whom the mortgage is given.

Municipal. Of or belonging to a city ; but *municipal law* is the name given to the system of law of any one nation or state.

Municipal Corporation. A public corporation created by the government for political purposes, as a county, town or city.

Mutuum. A bailment consisting of a loan of goods for consumption as coal oil or grain to be returned in property of the same kind and quantity.

Necessaries. Such things as are proper and necessary for the sustenance of man.

Negotiable Paper. An instrument as a bill or note, which may be transferred from one to another by assignment or indorsement.

Negotiation. In mercantile law, the act by which negotiable paper is put into circulation by being passed from one of the original parties to another.

Nominal Damages. Those given for the violation of a right from which no actual loss has resulted.

Non-Suit. The name of a judgment given against a plaintiff when he is unable to prove his case.

Nonuser. A failure to use rights and privileges.

Notary Public. An officer appointed under the laws of the different Provinces, whose acts are respected by the law-merchant and the law of nations; and hence have force out of their own country.

Notice of Protest, also called **Notice of Dishonor.** The notice given to a drawer or indorser of a bill, or an indorser of a negotiable note, by a subsequent party that it has been dishonored either by non-acceptance or non-payment.

Notice to Quit. A request of a landlord to his tenant to quit the premises.

Nuisance. Anything that unlawfully injures or damages a person in the enjoyment of life and property.

Oath. A pledge given by the person taking it, that his promise is made under an immediate sense of his responsibility to God.

Open Policy. One in which there is no valuation of the thing insured.

Oral Contract. An agreement by means of spoken words.

Ordinance. A rule, or order, or law. Usually applied to the acts or laws by the common council of a city.

Outlawed. A debt is said to be outlawed that has existed for a certain length of time, after which the law on that ground alone prevents its being enforced.

Par. Equality of value. Bills of exchange and stocks are at par when they sell for their face value. They are above or below par when they are worth more or less than their face value.

Parol Contract. Any agreement not under seal. It is often used as synonymous with oral contract.

Partners. The members of a firm or partnership. Dormant partners are those whose names are concealed from the public; ostensible partners are those whose names are held out to the public as the members of the firm; nominal partners are those who appear to the public as members of the firm, but have no real interest.

Partnership. The relationship resulting from an agreement between two or more persons to place their money, effects, labor and skill, or some or all of them, in some enterprise or business, and divide the profits and bear the losses in certain proportions.

Party-Wall. A wall common to two adjoining estates.

Pawn. Same as *Pledge.*

Payee. The person to whom the payment of any kind of commercial paper is directed to be made.

Payment. The fulfillment of a promise, or the performance of an agreement, usually by the delivery of a sum of money.

Penalty. Forfeiture, or sum to be forfeited, for non-performance of an agreement.

Per Centum or Per Cent. By the hundred.

Perils of the Sea. All the dangers naturally incident to navigation.

Perjury. A wilfully false statement, by one who is lawfully required to depose the truth, and who is lawfully sworn, made in a judicial proceeding, and in relation to a matter that is material to the point in question.

Personal Property. Consists of such things as are movable, and may be taken by the owner wherever he goes.

Pledge. A bailment of personal property to secure the payment of some debt or the fulfillment of some agreement. The bailor is called the *pledgor*, and the bailee the *pledgee*

Pledgee. A person in favor of whom some obligation is contracted, whether to pay money or to perform some act.

Pledgor. The person entering into an obligation to pay money or to perform some act.

Policy. The written contract of insurance.

Poor Debtor. A person arrested or imprisoned for debt, and entitled to discharge upon making oath that he has no property with which to pay the debt. There are but few instances now in which arrest is allowed for an ordinary contract debt.

Post-Dated. Having a date subsequent to that at which it is actually made.

Power of Attorney. A written instrument under seal by which one party appoints another to be his attorney, and empowers such attorney to act for him.

Premium. The consideration or price paid for insurance.

Prescription. The right to a thing derived from immemorial usage.

Presumption. An inference of the law, from certain facts, of the existence or truth of some other fact or proposition.

Price. The consideration given in money for the purchase of a thing.

Prima Facie. Literally, at the first appearance. *Prima facie* evidence is that which is sufficient to establish a fact, unless it be rebutted or contracted.

Principal. (1) A party for whom another is authorized to do certain acts with third parties. (2) A sum of money at interest.

Privity of Contract. The relation which exists between two parties who have made a contract.

Probate of a Will. The proof given before a court or judge that an instrument produced as the will of a deceased person, is in fact what it purports to be.

Promissory Note. A written promise, signed by the person promising, to pay a certain sum of money at a certain time to a person named, or to his order, or to the bearer.

Prosecute. To proceed against by legal measure.

Protest. A formal declaration in writing by a notary public of the demand and refusal to pay a note or bill.

Proxy. (1) One who represents another. (2) A writing by which one authorizes another to vote in his place.

Public Enemies. Those who belong to a nation at war with another.

Quasi. As if; as though,

Quasi Corporation. A public body or municipal organization which is not vested with the general powers of corporations, but is recognized by a statute or usage as persons or aggregate corporations, with the power of suing and being sued.

Quit Claim Deed. A form of deed in the nature of a release without covenants of any kind.

Ratification. Giving force to a contract made by the person in question, but not now in force, or by another man as his agent.

Real Covenant. A covenant connected with the conveyance of land, and which runs with the land, and which any owner of the land can enforce, although he be not a party to the instrument in which the covenant is contained.

Real Estate. Same as real property.

Real Property. That which is fixed or immovable, and includes land and whatever is erected or growing upon it, with what is beneath or above the surface.

Realty. Same as real property.

Receipt. A written acknowledgment by one receiving money or other property that it has been received.

Receiver. Usually means a person appointed by a court to take and hold property in dispute, or the property of a bankrupt.

Recoupment. A reduction or diminution of damages in an action on contract for breach of warranty or defects in performance.

Recovery. The amount of the judgment which the party to an action recovers.

Re-enact. To enact anew.

Registry. The entering or recording of real estate conveyances in books of public record.

Reinsurance. Insurance effected by an insurance company to protect itself against insurance risks which it has assumed.

Release. An instrument in the general form of a deed that in distinct terms remits the claim to which it refers; and being under seal, although reciting only a nominal consideration, extinguishes the debt.

Remedy. The legal means employed to enforce a right or redress an injury.

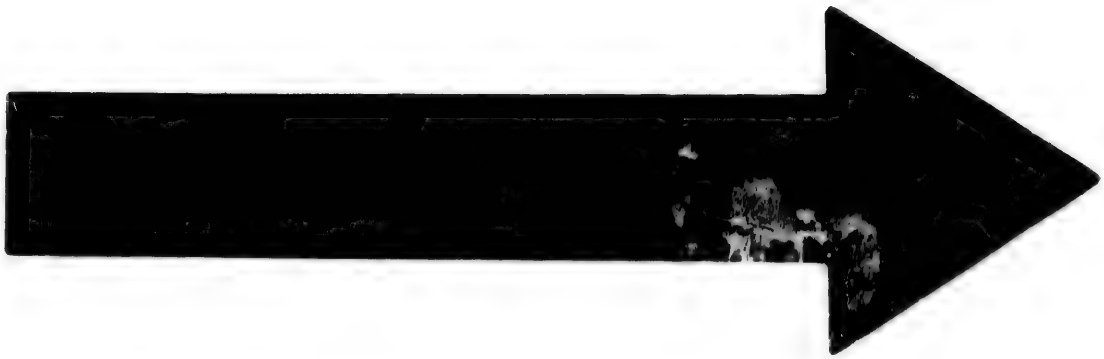
Rent. Compensation for the use of real property. When stated in a lease it is called rent reserved.

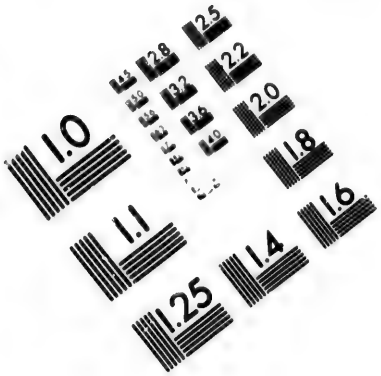
Rescission. The annulling or dissolution of contracts by mutual consent, or by one party because of a breach of the contract by the other.

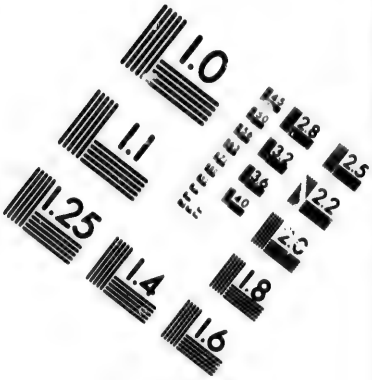
Revert. To fall again into the possession of the donor, or of the former proprietor.

Right of Survivorship. This means that the survivor or survivors take the right or interest of their deceased tenant, which in other cases would go to his heirs.

Riparian Owners. Those who own land bounded by a water course.







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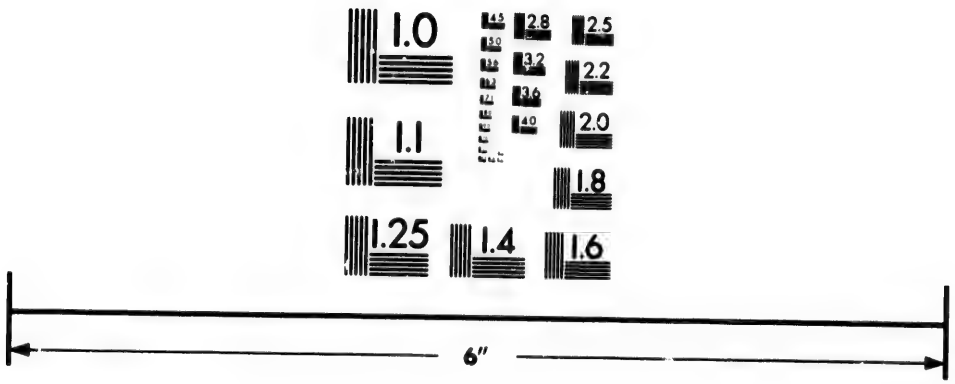

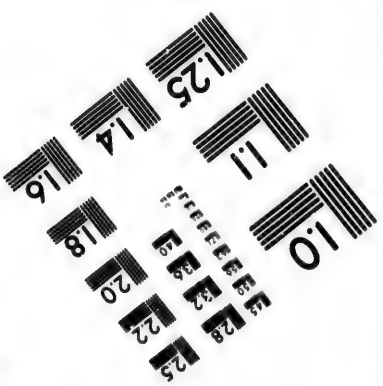

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Salvage. Property saved from wreck or loss at sea; or compensation given for service rendered in saving it.

Satisfaction. Payment of a legal debt or demand; the charging or cancelling of a judgment or a mortgage, by paying the amount of it.

Scrip. Certificate of stock.

Seal. An impression upon any impressible substance; or a piece of paper pasted on with intent to make a seal of it.

Sea-worthiness. The sufficiency of a vessel in materials, construction and equipment for the service in which it is employed. Seaworthiness is an implied condition of marine insurance; unseaworthiness defeats insurance.

Set of Exchange. The different parts of a bill of exchange taken together. Each part is a perfect instrument by itself, and the payment of any one avoids the other.

Set-Off. A claim which one party has against another who has a claim against him; a *counter-claim*.

Severalty. A state of separation. An estate in severalty is one held by one person in his own right.

Severance. The removal of fixtures from land.

Shipper. One who gives merchandise to another for transportation.

Shipping Articles. The agreement between the master of a vessel and the seamen determining the nature of the contract

Slander. Injurious words spoken of another, but not published.

Slander of Title. A statement tending to injure the title of another by minifying or cutting it down.

Smart Money. Damages beyond the thing sued for, allowed on the ground that the offence may be so great that the offender ought to be made an example of.

Specialty. A contract under seal.

Specific Performance. The actual performance of a contract by the party bound to fulfil it.

Statute. An act of the Legislature.

Statute of Frauds. An English statute, generally re-enacted in this country, requiring certain contracts to be made in writing; designed to prevent fraud and perjury.

Statute of Limitations. A statute requiring an action to be commenced within a certain time after the demand has arisen. It *limits* the time to sue, hence its name.

Stock. Same as *Capital Stock*. It is also used to denote the shares into which the Capital Stock is divided.

Stockholder. The owner of one or more shares of the stock of a corporation.

Stoppage in Transit. A stoppage, by the seller, of goods sold on credit before reaching their destination upon learning of the buyer's insolvency.

Stranger. In contracts a person who is not one of the parties to the contract.

Sub-Agent. A person appointed by an agent to perform some duty relating to the agency.

Sub-Contract. A contract made by one who has agreed to perform labor or service with a third party for the whole or part performance of that labor or service.

Subject-Matter. The thing to be done or omitted in a contract.

Subornation of Perjury. Inducing or procuring another to commit perjury.

Subrogation. The substitution of one person or thing in the place of another, particularly the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter.

Subsidy. A money grant from government.

Suit. The prosecution of some claim or demand in a court of justice.

Surety. One who has agreed with another to make himself responsible for the debt, default, or misconduct of a third party. Similar to *guarantor*.

Suretyship. The liability or contract of a surety.

Surrender Value. The amount which an insurance company will pay for an unexpired policy.

Tare. An allowance in the purchase and sale of merchandise for the weight of the package in which the goods are contained. It may also be an allowance for the waste or diminution in the quality or quantity of the goods.

Tax Deed. A deed given by the officer of the law charged with the collection of taxes to the purchaser of land sold for taxes at a tax sale.

Tenant. One to whom another has granted for a period, the use of certain real estate.

Tender. An offer of a sum of money in satisfaction of a debt or claim, by producing and offering the amount to the creditor and declaring a willingness to pay it.

Testator. One who has died leaving a will.

Tonnage. The carrying capacity of a vessel.

Tort. A private wrong or injury other than a breach of contract.

Trade Mark. The symbol, emblem or mark which a manufacturer puts upon the goods he manufactures.

Trespass. Any wrongful act of one person whereby another person is injured.

Trustee. One who holds property for the benefit of another.

Ultra Vires. The acts or proceedings of a corporation done beyond the scope of its powers.

Underwriter. Same as *Insurer.*

Usage. In mercantile law the well known uniform practice, or the manner of performance of an act or contract.

Use and Occupation. The liability of a tenant to pay a reasonable rent for the use and occupation of premises in case an agreement has been made for use, but the rent not fixed.

Usury. Illegal interest.

Validity. Legal strength or force; the quality of being good in law.

Valued Policy. One which fixes the value of the property insured.

Vassal. One who held property of a superior or lord.

Vendee. One to whom anything is sold, a purchaser; a buyer.

Vendor. A seller; the person who sells a thing.

Vendor's Lien. The equitable lien allowed the seller of land until the whole purchase money is paid.

Void. Of no force or effect.

Voidable. That may be avoided; not absolutely void.

Wager Policy. A policy of insurance in which the insured person has no insurable interest.

Waive. The abandonment of a right, or a refusal to accept it.

Ward. A minor under guardianship.

Warranty. An agreement to hold one's self responsible, if a certain thing does not turn out as represented.

Waste. Spoil or destruction done or permitted to land or the buildings by a tenant.

Wharfage. The compensation paid the owner of a wharf for the privilege of landing goods upon it, or loading from it.

Wharfinger. The owner of a wharf who maintains it for the purpose of receiving and shipping merchandise.

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